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**Chief Executives of Global Companies and Investors  
Beware! Indian Beneficial Ownership Norms may lead to  
Penalties**

## INTRODUCTION

For quite some time now, the company law administration in India has been issuing standard and generic email advisories for compliance with significant beneficial ownership (SBO) provisions under the Companies Act, 2013 (Companies Act) and the Companies (Significant Beneficial Owners) Rules, 2018 (SBO Rules) (as mentioned previously in our *Ergo*<sup>1</sup>). Recently, the company law administration through the instrumentality of the jurisdictional Registrars of Companies has started issuing show cause notices under Section 206(1) of the Companies Act, followed by adjudication proceedings, and eventually issuing penalty orders for violation of the SBO norms.

On 22 May 2024, the Register of Companies, Delhi and Haryana (ROC) issued an Order<sup>2</sup> for penalty of INR 2,00,000 each against Mr Satya Nadella (Chief Executive Officer (CEO), Microsoft Corporation) and Mr Ryan Roslansky (CEO, LinkedIn Corporation) along with a penalty of INR 17,50,000 against LinkedIn Technology Information Private Limited (LinkedIn India) and its directors for violation of Section 90 of the Companies Act.

This ROC Order has obviously been in the limelight due to the status of the individuals involved; however, this follows a few other orders (refer orders related to *Leixir Resources Private Limited*<sup>3</sup> and *Metec Electronics Private Limited*<sup>4</sup>) issued along similar lines, albeit with slightly different facts, whereby CEOs of global companies and Ultimate Beneficial Owners (UBOs) are being held as SBOs for Indian companies. We are also aware of multiple other similar notices and matters where different Registrars of Companies seem to be towing this line of enquiry.

## BREAKING DOWN THE ROC'S ORDER IN LINKEDIN INDIA IN SUMMARY

With respect to non-compliance of Section 90 (*register of significant beneficial owners in a company*) of the Companies Act, LinkedIn India's explanation was centered around the fact that there is no individual who holds a majority stake in its ultimate holding company, ie, Microsoft Corporation. Therefore, LinkedIn India does not have any SBO.

However, the ROC rejected this argument stating that LinkedIn India ignores the other facet whereby an SBO should also be identified through the test of 'control' or 'significant influence'. The ROC emphasized that indirect 'right to exercise control' or 'significant influence' is tantamount to exercise of control and significant influence, and that there is no requirement in the law that 'control' or 'significant influence' can only be exercised through a written contract or under a law.

The ROC evaluated the beneficial ownership in LinkedIn India through three ways (i) holding subsidiary relationship; (ii) the reporting channels of the directors; and (iii) the test of financial control. Basis these tests, the ROC has concluded that Mr Satya Nadella, the CEO and Chairman of Microsoft Corporation, and Mr Ryan Roslansky, the CEO of LinkedIn Corporation are the SBOs of LinkedIn India. The ROC's rationale was that since LinkedIn Corporation had been reported as the holding company of LinkedIn India in the financial statements (without any presence in the upstream layers), it exercises control on the composition of the Board of LinkedIn India. As a result, Mr Ryan Roslansky, the CEO of LinkedIn Corporation should be considered as the SBO of LinkedIn India. Further, as Mr Ryan Roslansky reports to Mr

<sup>1</sup>[https://www.khaitanco.com/thought-leaderships/Communication\\_from\\_Ministry\\_of\\_Corporate\\_Affairs\\_Pertaining\\_to\\_Significant\\_Beneficial\\_Ownership](https://www.khaitanco.com/thought-leaderships/Communication_from_Ministry_of_Corporate_Affairs_Pertaining_to_Significant_Beneficial_Ownership).

<sup>2</sup> Order for Penalty for Violation under Section 89 and Section 90 of the Companies Act, 2013 in the Matter of LinkedIn Technology Information Private Limited (CIN - U72900DL2009PTC197503), No. ROC/D/Adj/Order/Section 89&90/2246- 2256, dated 22 May 2024

<sup>3</sup> Order for Penalty for Violation under Section 90 of the Companies Act, 2013 in the Matter of Metec Electronics Private

Limited (CIN - U74999HR2011PTC043763), No. ROC/D/Adj/Order/Section 90/Leixir/1978 - 1986, dated 6 May 2024

<sup>4</sup> Order for Penalty for Violation under Section 89 and Section 90 of the Companies Act, 2013 in the Matter of Metec Electronics Private Limited (CIN - U74999DL2019PTC347291), No. ROC/D/Adj/Order/Section 89&90/Metec/54-62, dated 8 January 2024

Satya Nadella, Mr Nadella should also be viewed as an SBO.

The ROC further went on to state that majority of the directors of LinkedIn India are employees of LinkedIn Corporation or Microsoft Corporation whose reporting channel would go up to Mr Ryan Roslansky and/or Mr Satya Nadella. Through these layers of reporting channels Mr Ryan Roslansky and Mr Satya Nadella have the 'right to exercise control' over majority of the directors of LinkedIn India.

In light of the above, the ROC *inter alia* determined that Mr Satya Nadella and Mr Ryan Roslansky are the SBOs in relation to LinkedIn India and they would be liable to a penalty due to their failure to report as per Section 90(1) of the Companies Act. Additionally, LinkedIn India and its directors were also penalized for not taking the necessary steps to identify its SBO such as sending notice as per Form BEN-4 to LinkedIn Ireland Unlimited Company, its shareholder, leading to violation under Section 90(4A) of the Companies Act.

Further, the ROC found LinkedIn India to be in violation of Section 89 (*declaration in respect of beneficial interest in any share*) for incorrectly disclosing the date of acquiring the beneficial interest; however, that is not the subject matter of this ERGO.

## COMMENT

This ROC Order will require all companies and investors to re-assess their SBO filings and strategies. It also necessitates companies to periodically issue notice as per Form BEN-4 to its shareholders to ascertain whether any changes have transpired to the SBO reporting statuses.

The SBO Rules have no doubt provided for the 'control' and 'significant influence' test to determine SBO since the provisions were made effective from 2019; however, this requires a factual analysis. It is noteworthy that when the SBO Rules were first introduced in 2018, it provided for a certain "senior managing official"<sup>5</sup> to be declared as the SBO if all other tests for determination of an SBO fails. This test of requiring the "senior managing official" to be reported as the SBO continues to be used by the Reserve Bank of India and Securities and Exchange Board of India in the UBO determination and is consistent with global standards. However, this reference to "senior managing official" is typically confined to the entity under question with the rationale that if there is no ascertainable shareholder, then the individual who takes managerial decisions for the entity should be reported as the SBO. This does not typically encompass CEOs of global companies in the manner as was the case in the *LinkedIn order*<sup>6</sup> or the *Leixir order*<sup>7</sup>.

These orders also report and elaborate on the holding structures of investments as disclosed by these entities to the Registrars of Companies. Therefore, investors need to consider how to manage this disclosure risk as well.

While the orders issued by the Registrars of Companies impose penalties, it may be noted that there are other consequences specified under Section 90 of the Companies Act, which include references to the National Company Law Tribunal which can, amongst other things, pass orders restricting transferability of shares held in the Indian company.

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<sup>5</sup> Refer Rule 2(1)(e) of the SBO Rules prior to amendment in 2019.

<sup>6</sup> Order for Penalty for Violation under Section 89 and Section 90 of the Companies Act, 2013 in the Matter of LinkedIn Technology Information Private Limited (CIN - U72900DL2009PTC197503), No. ROC/D/Adj/Order/Section 89&90/2246- 2256, dated 22 May 2024

<sup>7</sup> Order for Penalty for Violation under Section 90 of the Companies Act, 2013 in the Matter of Metec Electronics Private Limited (CIN - U74999HR2011PTC043763), No. ROC/D/Adj/Order/Section 90/Leixir/1978 - 1986, dated 6 May 2024

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