

REGISTRAR OF COMPANIES EMPLOY TESTS FOR IDENTIFYING SIGNIFICANT BENEFICIAL OWNERS OF COMPANIES

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Recently, the Ministry of Corporate Affairs (MCA) through Registrar of Companies (ROC) passed an order emphasizing on compliance with the Companies (Significant Beneficial Owners) Rules, 2018 (Rules), and employed two key tests to determine whether an individual qualifies as a Significant Beneficial Owner (SBO) based on the significant influence or control over the company exercised by them.

Vide order dated 22.05.2024,¹ the ROC ordered Microsoft CEO, Mr. Satya Nadella, CEO of Microsoft-owned LinkedIn, Mr. Ryan Roslansky, amongst eight others, to pay a cumulative penalty of Rs. 27,10,800/- for non-compliance with Sections 89 and 90 of the Companies Act, 2013 (the Act). While deciding the case, the ROC noted discrepancies in the disclosures made by LinkedIn Technology Information Pvt. Ltd. (LinkedIn) in filing form MGT-6 (form), as compared to its financial statements. The filings before the ROC claim creation of beneficial interest on 11.01.2024, while the financial statements indicated that the beneficial interest arose much earlier. Upon identifying that the date of acquiring beneficial interest in the form was incorrectly reported and the required form was not submitted within the stipulated time, the ROC held that LinkedIn violated Section 89 (1) and (2) of the Act, punishable under Section 89 (5) of the Act. Furthermore, the ROC opined that as the date of creation of beneficial interest predates the Act of 2013, the Parties should have made the declarations regarding creation of beneficial interest under the relevant laws existing at the time when the interest was created.

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While deciding this case, the ROC employed two key tests for determination of SBO. These were the **Reporting Channel Test** and the **Test of Financial Control**. While applying the Reporting Channel Test, the ROC looked into the composition of directors of LinkedIn India and found that a significant number of the directors were employees of LinkedIn Corporation or Microsoft Corporation, who report to Mr. Ryan Roslansky, or Mr. Satya Nadella. The ROC inter-alia held Mr. Ryan Roslansky and Mr. Satya Nadella, among others as SBOs as they have the ‘right to exercise control’ over the directors of LinkedIn India, through these reporting channels. Further, LinkedIn India, along-with its directors, were also held liable for failing to identify their SBOs, and not sending the required notice to the SBOs. On the basis of this finding, the ROC found them liable to pay a penalty for violation of Section 90 (1) of the Act.

The ROC, while applying the Test of Financial Control, assessed Microsoft Corporation’s financial control over LinkedIn. It found that Microsoft Corporation had significant financial control over LinkedIn, as LinkedIn carries out related-party transactions on behalf of other group entities (and vice-versa). Considering this, the ROC held that the establishment of ‘right to exercise’ significant influence or control, beyond direct holdings, is sufficient under the Rules. This is considering the finding that the financial control of LinkedIn primarily lies with Microsoft Corporation employees under the supervision of its CEO, granting Mr. Satya Nadella the ‘right to exercise control’ over the subject company.

With this order, the ROC has cleared the air regarding the uncertainties surrounding SBO Regulations by employing the two tests to ascertain whether an individual would qualify as an SBO, particularly regarding ‘exercise of significant influence or control’. The ROC, by delving deeper into the language of the provisions delineating SBOs has in essence, distinguished between the right to exercise significant control or influence, and actively exercising control or influence. It has reiterated that even individuals who have the potential to exercise control or influence over a company will also be considered SBOs, and they need to be declared so, as per the Regulations. Hence, this order serves as a cautious reminder to all companies to bolster their compliances, and actively adhere to the provisions relating to SBOs in the Act as well as the Rules.
