FROM COMPLIANCE TO COMPLEXITY: A DEEP DIVE INTO ROC'S APPROACH IN IDENTIFYING SIGNIFICANT BENEFICIAL OWNERSHIP

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Significant Beneficial Ownership ("SBO") disclosures make for the cornerstone of compliance under company law to ensure unethical practices of illicit money laundering and terror financing do not circumvent scrutiny behind inconspicuous business structures. While the need for disclosures cannot be understated, it is vital that regulations do not unfairly burden companies for defaults by erring and unaware shareholders. Legislative efforts therefore become vital in striking a balance between the rights, roles and responsibilities of the parties involved. However, there has been a trend of Registrar of Companies ("RoC") rulings that overarch beyond their scope, alongside bench-to-bench inconsistency in identifying Significant Beneficial Owners ("SBOs").

The authors analyse the efficacy of the existing statutory framework in India through a doctrinal assessment of the disclosure and identification regime, a critical analysis of representative RoC approaches, and a comparative evaluation vis-a-vis other regimes and international standards to contextualise the gaps that provide leeway to enablers. It highlights how the ever-blurry landscape of corporate governance has become more opaque, increasing the compliance burden of companies without offering sufficient clarity to navigate. It illustrates how ambiguity in regulations and perilous precedent could hamper Ease of Doing Business in India, hindering both domestic and foreign investment. The article concludes by advocating a reform-centric, standardised approach to streamline identification criteria, while also

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providing constructive compliance measures that companies may adopt to secure themselves from regulatory action, alongside collaborative efforts between stakeholders to secure the interests of the community at large.

Keywords: *Significant Beneficial Owner, Registrar of Company, Disclosures, Legal Owner, Indirect Holding, Exercise of Control*

I. Introduction

India's vast railway network connects all big cities and small villages. On the surface, however, all we notice are the railway tracks, trains and schedules. The operations, control rooms and signals remain hidden behind the veils of the system. Now consider how challenging it would be to resolve a delay in this system when a person in charge is unidentified.

Identifying significant beneficial ownership ("**SBO**") is often akin to solving a complex puzzle. On the surface, we see businesses and corporate names, but hidden beneath are people who have direct or indirect control in the company's decision making. This hidden control is what **SBO** is all about. In today's global economy, where money moves quickly across borders, **trust and transparency** are more important than ever. However, it comes with its own set of complex ownership structures, making it hard to know who is truly in control.

A beneficial owner tries every means to stay unidentified which permits them to escape criminal culpability to carry out harmful crimes including but not limited to financial terrorism, money laundering and tax evasion. This lack of clarity can also hurt investor confidence.

To solve this, governments worldwide are creating stricter rules to uncover these hidden influencers and make business ownership more transparent. The Financial Action Task Force ("**FATF**") is an intergovernmental organization that paves the way for member nations to come together and combat these evils that pose an inherent threat to the international financial system. Owing to the widespread nature of these illicit actions, it exercises cross-jurisdictional assessment by setting standards.[1]

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[1] Cyril Amarchand Mangaldas, 'New SBO Rules – Implementation Challenges' (*Cyril Amarchand Blogs,* 2019) <https://corporate.cyrilamarchandblogs.com/2019/10/new-sbo-rules-implementation-challenges-companies-act/> accessed 20th December 2024.

India has over **22 lakhs companies registered with Ministry of Corporate Affairs ("MCA")**[2], and the way companies are structured have become more complicated over the years. Private companies dominate, making up about **95% of all businesses**, while public limited companies, though fewer, generally depict better governance practices.

The FATF considers that economies with stringent SBO rules see reduction in financial crimes since access of information to competent authorities assist them in managing the risks and implement controls to combat the same. India, being one of the leading drivers of global trade, is enabling Ease of Doing Business to accelerate its economic development, transparency is not just desired, but also imperative.

This paper seeks to explore the status of SBO compliance in India while analysing recent findings of non-compliance by the RoC. It analyzes the resulting regulatory actions in light of the current regulatory framework.

II. THE STATUTORY FRAMEWORK GOVERNING SBO

2.1. FATF Commission

The FATF carries out its work by the drafting of Recommendations ("Standards") that countries across the globe adopt. In furtherance of its goal to combat these evils, the organization believes it to be necessary for countries to have unfettered access to necessary, accurate and up-to-date data on the true owners of companies and institutions. In the year 2022, it introduced the Recommendation 24 entailing a 'Guidance on the Beneficial Ownership for Legal Persons.'

These standards are benchmarks that aid countries in setting policies to ensure data pertaining to legal owner, beneficial owner, source of the funds of the corporation and their activities may be made available to the law enforcement authorities to uncover the underlying illicit activity. It aids in the mitigation of risks through the establishment of an appropriate risk assessment alongside the introduction of frameworks and arrangements in place to combat such criminal misuse.

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[2] Ministry of Corporate Affairs, 'Registered Companies in India' (*MCA*) < https://www.mcacdm.nic.in/#:~:text=Out%20of%20the%20above%20number,of%20companies%20registered%20in%20India> accessed 20 January 2025.

A beneficial owner has been defined to "refer to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person or arrangement. Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person or arrangement." The FATF recommends that where the position of a beneficial owner cannot be identified, a natural person holding "the position of a senior managing official" may be identified to be a beneficial owner in the company.

2.2. Companies Act

India joined the FATF as a member country in the year 2010 and proceeded to incorporate the guidelines laid down under Recommendation 24 into its statutory framework. The Companies Law Committee in the year 2016 drafted a report[3] underscoring the imperative need for body corporates to disclose necessary details of their beneficial owners. Recognizing the risks that follow complex business structures, the aim was to make it mandatory for associations to maintain such details coupled with additional mandatory disclosures maintained in a Registrar.

The MCA has been taking nodal steps to ensure adequate safeguards and transparency are in place. In furtherance of this, the main authority, the Companies Act, 2013 ("**Act**") was amended to incorporate provisions relating to necessary disclosures, mandating all companies to adhere to disclosures and maintain a register of the identified Significant Beneficial Owners. It further notified the Companies (Significant Beneficial Owners) Rules, 2018, ("**SBO Rule**") which was amended by way of the introduction of the Companies (Significant Beneficial Owners) Amendment Rules, 2019. ("**Amending Rule**") The Act alongside the defining rules would be collectively referred to as "**Regulations**".

III. Determining Significant Beneficial And Legal Ownership

Before delving into the nuances of this complex notion, it becomes imperative to reflect upon the crucial classification made between a SBO and the Legal owner of an enterprise.

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[3] Ministry of Corporate Affairs, Report of the Companies Law Committee (*MCA*, 1 February 2016) <https://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf> accessed 25 January 2025.

While certain overlaps may exist, the **legal title/legal ownership** of a shareholder gets conferred upon an individual, when they ultimately direct the control over the entity, whether it is it directly or indirectly. This provides them with a legal title and ancillary rights to exercise their interest represented as their right to voting, receive dividends and any other right attached to such shares. The company would be subsequently required to maintain their relevant details in the Registrar of members. This may be inclusive of a "foreign register" if provided by the Articles of the company for holders outside India.[4]

A person gets recognized as a **beneficial owner** by being the ultimate owner/controller of a body corporate through their ownership interests or alternatively through the exercise of ultimate effective control. Beneficial owners enjoy their economic benefits **irrespective** of the **legal title**. To simply put, an individual gets conferred with the title of a Significant Beneficial Owner when they hold ultimate beneficial interest, but their name does not form part of the registrar of the members of a company[5].

To understand the position of a SBO, we must understand the position it is conferred upon as it remains somewhat contrary to the provisions of the Companies Act. Aside from recommending a shareholding limit for identification, it lays down alternative grounds as follows:

Reporting Company	Any entity that comes within the purview of the definition of Company[6] and is mandated to comply with the provisions contained within Section 90 (1)[7].
SBO	**Whether acting alone or jointly or through one or more person or trusts, is in the possession of the one or more of the following rights in the reporting company:** (i) Is holder of indirectly or together, not less than 10% of the Share Capital of the company;

[4] The Companies Act, 2013 (no 18 of 2013) s 88.
[5] The Companies (Significant Beneficial Owners) Rules 2018, G.S.R. 561(E), s 2(e).
[6] The Companies Act, 2013 (no 18 of 2013) s 2(20).
[7] The Companies (Significant Beneficial Owners) Amendment Rules, 2019, G.S.R. 100(E), s 2(f).

	(ii) Is holder of indirectly or together, of not less than 10% of the Voting Rights of the company; (iii) Right to receive or participate in not less than 10% of the total distributable dividend in a given financial year through indirect holding alone or together with direct holdings; (iv) Right to exercise or actual exercise of significant influence or control, in any other manner, except for direct holdings;
Exercise of Significant Influence	Power to participate, whether directly or indirectly, in Financial & Operating policy decisions. Howsoever, this should not mean to be in control or joint control of the policies[8].
Exercise of control in the Company[9]	**Is inclusive of the right to:** 1. Appoint a majority of the directors on board 2. Influence the management on key management or policy decisions 3. Exercise authority, whether directly or otherwise 4. Whether by virtue of their shareholding/management rights or shareholders agreements or voting agreements or any other manner whatsoever
Holding of Majority Stake	5. Holding of more than one-half of the equity share capital in the body corporate 6. Holding more than one-half of the voting rights in the body corporate

[8] The Companies (Significant Beneficial Owners) Amendment Rules, 2019, G.S.R. 100(E), s 2(i).
[9] The Companies (Significant Beneficial Owners) Amendment Rules, 2019, G.S.R. 100(E), s 2(b); The Companies Act, 2013 (no 18 of 2013) s 2(27).

	7. Having the right to receive or participate in more than one-half of the distributable dividend or any other by the body corporate
The notion of Direct Holdings	**The conferment of direct rights onto the individual must possess two distinct parameters:** (i) The shares being held in the name of such an individual (ii) The individual having held or acquired the interest within the ambit of Section 89 (2)[10] alongside pertinent disclosures being made to the reporting company within consideration
The notion of Indirect Holdings	In the absence of indirectly rights being conferred in pointers (i) to (iii), the individual may not be considered a SBO[11].

IV. Identification Of Indirect Holdings Of Sbo In Other Entities[12]

While this summarizes instances wherein the SBO is an individual, in case the beneficiary other than such a natural person, the following implications arise in cases of indirect holding:

1. In case of the member being a company other than a limited liability partnership, the test of majority stake holding in the member or the in the ultimate holding company.
2. In case of the member being a **Hindu Undivided Family**, the individual is the Karta.
3. In case the member is a **partnership firm**, the holding of not less than 10% of the capital or entitlement of not less than 10% of the profits of the partnership.

[10] The Companies Act, 2013 (no 18 of 2013) s 89(2).
[11] LinkedIn Technology Information Private Limited, ROC Delhi (2024) RoC 2246-2256 (43).
[12] The Companies (Significant Beneficial Owners) Amendment Rules, 2019, G.S.R. 100(E), Explanation III.

4. In case **no natural person** can be identified in the aforementioned instances, the relevant natural person who holds the position of the senior managing official is identified.

5. In case the member is a **trust** through a trustee, the identification must be inclusive of the identification of the author of the trust, the trustee, and the beneficiaries not holding less than 10 % interest in the trust and any other natural person who exercises ultimate effective control over the trust through a chain on control or ownership;

The SBO rules specified that these rules are not applicable for the shares held in companies such as Pooled Investment Funds which are regulated under the SEBI Act subsequently[13].

The Amending Rules provided the much needed respite, clarifying where the member of the reporting company is a pooled investment vehicle (PIV) or an entity in control by such a PIV, when based in a member state of the FATF of Money Laundering and Regulator of the securities market in the state forming part of the International Organization of Securities Commission, and the individual is a:

1. A general partner; or
2. Investment Manager; or
3. CEO, where the investment manager of the pooled vehicle is a body corporate or a partnership entity.

Additionally, the initial regulatory framework introduced did not account for Limited Liability Partnerships (LLPs). This was rectified by the MCA in the year 2023, with the introduction of the Limited Liability Amended Partnership (Third Amendment) Rules, 2023[14]. It mandates every LLP to maintain a register of their partners in accordance with **Form 4A**, with such relevant particulars such as: Personal Details, Date of acquiring partnership, Amount and nature of contribution and so forth. A declaration must be made for possessing their name in the register with the absence of beneficial interest. Similarly, another declaration be made for having beneficial interest with no name in the register. The MCA also notified the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 which mandate similar

[13] The Companies (Significant Beneficial Owners) Rules 2018, G.S.R. 561(E), s 8.
[14] The Limited Liability Amended Partnership (Third Amendment) Rules, 2023, **G.S.R. 803(E)**.

disclosures to be made by LLPs. It delineates the criteria required for identification, duties of all parties involved, and the necessary declarations.

4.1. Imperative Disclosures

The regulations impose a two-fold responsibility for the necessary disclosures to be made.

Section 89 of the Act implies that every member holding sharing, not having any beneficial interest, must make a declaration specifying relevant details of the person who holds such beneficial interest. Additionally, every person who holds such a beneficial interest is also required to make a declaration to the company in Form No. BEN-1 within 30 days from the commencement of ownership or any subsequent changes within the status of the ownership.[15].

The first and foremost responsibility lies with the individual who holds a significant beneficial interest in the body corporate to make such a declaration to them. The company must document all such details in a register maintained for such purposes which shall be available for inspection with a prior notice of not less than 2 hours during working hours alongside fees as maybe decided upon.[16]

It must also make timely fillings in the form of a return in Form No. BEN-2 with the Registrar within 30 days informing them of such updates[17]. This is accompanied with requisite fees prescribed under the Companies (Registration offices and fees) Rules, 2014[18].

Secondly, each company is tasked with the responsibility of identifying any SBO and requiring such SBO to comply with the necessary disclosures. The company must supply a notice to any natural person it identifies or has any reason to identify as SBO in the preceding three years pursuant to Form No. BEN-4[19]. Such an individual must correspond within 30 days of such a receipt of notice, on the failure of which, the company has the option to exercise its power to approach the tribunal with a request to restrict the right of transfer of their shares or even suspend any/all rights attached to their shares.

Section 90 goes on further to provide a clause empowering the Central Government to initiate any investigation into the beneficial ownership of share or any classes thereof as may be necessary.

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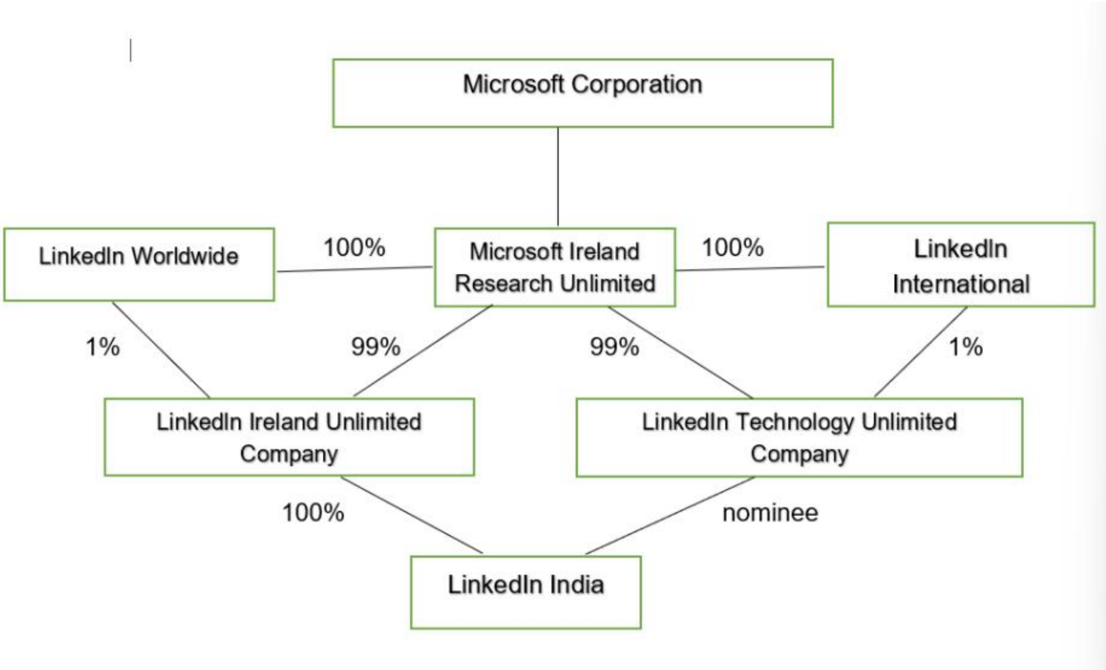
[15] The Companies (Significant Beneficial Owners) Rules 2018, G.S.R. 561(E), s 3(2).
[16] The Companies (Significant Beneficial Owners) Rules 2018, G.S.R. 561(E), s 5(1).
[17] The Companies (Significant Beneficial Owners) Rules 2018, G.S.R. 561(E), s 4.
[18] The Companies (Registration Offices and Fees) Rules, 2014, G.S.R 268(E).
[19] The Companies (Significant Beneficial Owners) Rules 2018, G.S.R. 561(E), s 6.

4.2. Identification of SBO in Companies

The law mandates a twin test to decipher where the individual comes under the ambit of a SBO. The first test undertaken is known as the objective test wherein the primary aim is to ascertain the status of the individual on the basis of their percentage shareholding the company and the majority holding through the ownership chain. The Companies Act prescribes the threshold for the identification of the SBO through direct shareholding to be capped at 25%[20] while the Rules prescribe 10% leading to potential conflicts[21].



The second, being the subjective test explores the notion of indirect exercise of control. It refers to whether the person has the right to exercise or actually exercises 'significant influence' or 'control' in any manner, other than merely through direct holding. It could be established through personal connections or relatives associated with the business enterprise. Alternatively, for instance, the reporting company may form part of a body corporate, where an individual holds a majority stake. This would make them fall within the ambit of the SBO regulations.

V. ANALYSIS

5.1. Factual Background of The Case

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[20] The Companies Act, 2013 (no 18 of 2013) s 90(1).
[21] The Companies (Significant Beneficial Owners) Rules 2018, G.S.R. 561(E), Rule 2(1)(h).

Microsoft Corporation is the parent company of LinkedIn India who has its Chief Executive Officer ("**CEO**") and Chairman as Mr. Satya Nadella. While, the LinkedIn Corporation, based in USA has Mr. Ryan Roslansky as the CEO.

While making statutory declarations LinkedIn India filed its form MGT-6 declaring LinkedIn Technology Unlimited Company ("**LinkedIn Technology**") alongside LinkedIn Ireland Unlimited Company ("**LinkedIn Ireland**") as registered holders and beneficial owners of one share in LinkedIn India.[22]

The date for the creation of this beneficial interest has been portrayed to be 11th of January 2024. However, the previous financial statements filed by LinkedIn India depicted a story to its contrary[23].

LinkedIn India further failed to make its statutory disclosures pertaining to SBO. This ultimately led to the Registrar of Companies to issue a show cause notice on failure to comply with Section 89[24] and 90 of the Act[25].

There were two primary facets that were dealt with in this scenario:

5.1.1. Failure to make timely disclosures

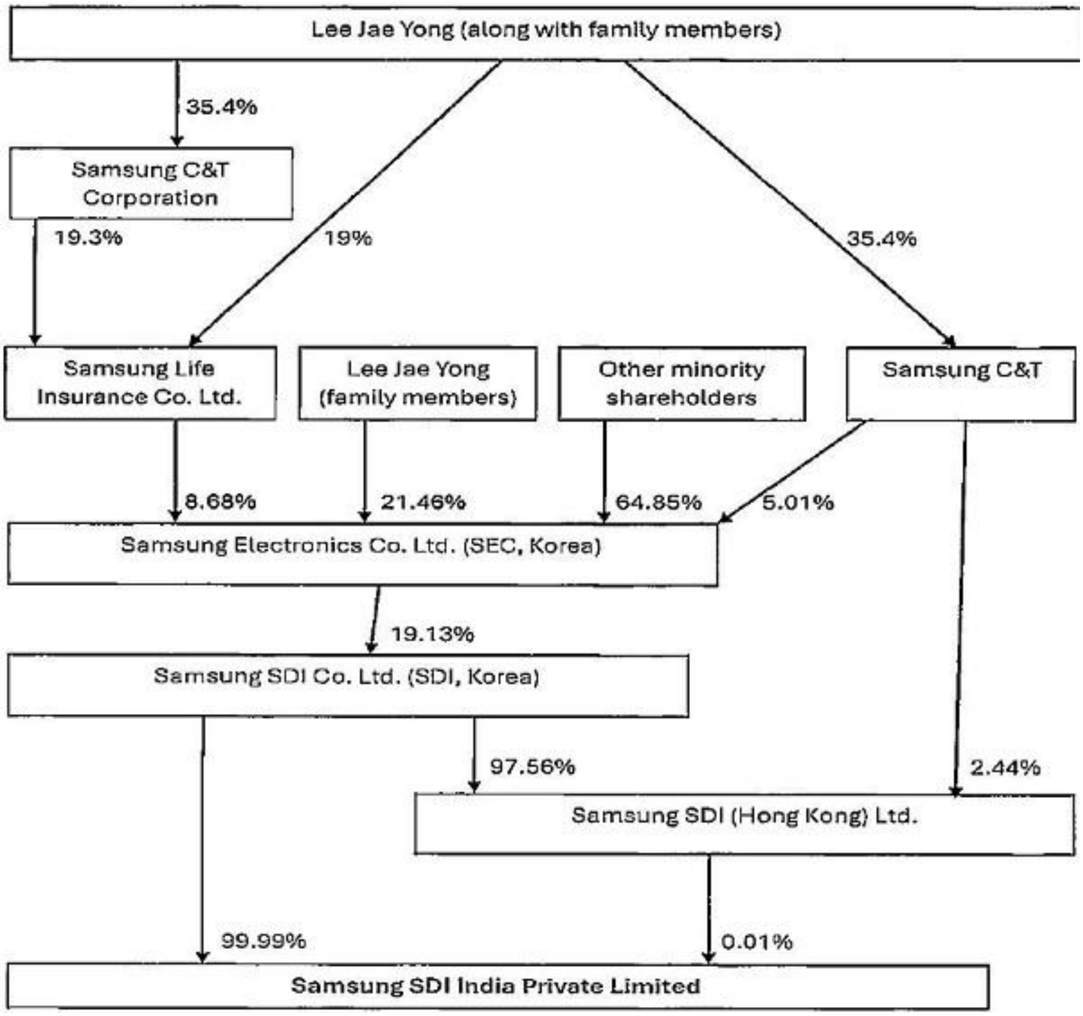
Per the financial statements submitted by the Company, LinkedIn Technology Unlimited Company holds 1 share where LinkedIn Ireland retains position as a nominee shareholder. Thus, the difference between the registered and beneficial owner pertaining to that one share was something the company was already aware of. The company clarified that erring on the side of caution both LinkedIn Ireland and Unlimited made their declarations owing to ambiguity under Section 89. The company retained its stance that the share was retained under LinkedIn Ireland and the date of creation of interest was erroneously labelled[26].

5.1.2. Incorrect Identification of the SBOs

The RoC Delhi held that Mr. Satya and Mr. Ryan came under the ambit of the definition of SBO. This was refuted by LinkedIn India on grounds as it was held by the Microsoft

[22] The Competition and Commercial Law Review, 'India's SBO Blitz and the New Reality for MNCs Worldwide' (TCCLR 13 September 2024) <https://www.tcclr.com/post/india-s-sbo-blitz-and-the-new-reality-for-mncs-worldwide> accessed 19th December 2024.
[23] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (2).
[24] The Companies Act, 2013 (no 18 of 2013) s 89.
[25] The Companies Act, 2013 (no 18 of 2013) s 90.
[26] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (3).

Corporation, a listed entity[27]. Being entities having separate and distinct management there was no single entity that controlled 10% or more of the stake in the company[28].



5.3. Factual Background

Samsung SDI India Private Limited ("**Samsung SDI India**") as a wholly owned subsidiary of Samsung SDI Co., Ltd. (Korea). The company's shares are mostly held by Samsung SDI Co., Ltd. (Korea) (99.99%), with a minuscule 0.01% being controlled by Samsung SDI (Hong Kong) Limited.

Another company, Samsung Display Noida Private Limited ("**SDNPL**"), which is a wholly owned subsidiary of Samsung Electronics Company Ltd., Korea ("**SEC, Korea**"). SDNPL's relation with Samsung SDI can be understood by analysing that, SEC, Korea also owns 100%

[27] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (6).
[28] *Ibid.*

of the voting rights in Samsung SDI Korea. SEC Korea holds 84.8% in Samsung Display Co Ltd, Korea which wholly owns Samsung Display Noida Private Limited. Further, Samsung SDI Co Ltd, Korea owns 15.2% in Samsung Display Co Ltd, Korea.

Samsung SDI India while complying with SBO Rules had liability to identify individuals qualifying as SBOs. However, RoC discovered irregularities that it did not register any person as an SBO, claiming no one met the criteria.

Further, the RoC concluded that the company failed to evaluate indirect ownership or rights, such as voting rights or distribution rights, that could indicate considerable influence. It was found that Mr. Lee Jae-Yong, Executive Chairman of Samsung Electronics Co., Ltd. (SEC, Korea), the ultimate holding company, along with his family, exerted significant control over the business. Further, Samsung SDI India failed to file Form BEN-2. Compounding the problem, the corporation gave erroneous information to Citi Bank, falsely showing that Samsung SDI Co., Ltd. (Korea) was not a listed entity, despite its listing on the Korean Stock Exchange. As a result, the RoC gave a show cause notice to Samsung SDI India for their non-compliance with Section 90.

5.4. Understanding ROCs Approach

The RoCs have come under the spotlight, receiving both commendation and criticism for their investigations in the recent orders. They have adopted an expansive approach to define the subjective test in recent SBO orders. Let’s delve into and closely examine this approach.

5.4.1. Linkedin India Case, Roc’s Observation

The RoC’s decision to designate Mr. Ryan and Mr. Satya as SBOs, despite their lack of direct or indirect financial ownership in LinkedIn India, reflects a dubious interpretation of the law. The RoC relied on three tests namely - Test of Shareholding, Test of Reporting Channels and Test of Financial Controls.[29]

1. **Test of Shareholding**, as previously established through (Figure 1), LinkedIn India and LinkedIn Corporation are both subsidiaries of Microsoft Corporation. In the statements submitted by LinkedIn India, Linkedin Corporation was a ‘Holding Company’[30], while it did not possess any shareholding in LinkedIn India. The Act mandates that a holding

[29] VJM & Associates LLP, ‘RoC imposed a penalty on LinkedIn India for Misidentification of Significant Beneficial Owners (SBO)’ (VJMGlobal 25 June 2024) <https://vjmglobal.com/blog/roc-imposed-a-penalty-on-linkedin-india-for-misidentification-of-significant-beneficial-owners-sbo/> accessed 21st December 2025.

[30] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (11).

company must control the composition of the Board of Directors or exercise control over more than half of the total share capital in subsidiary company[31].

Since, LinkedIn Corporation did not meet this requirement, the RoC investigated whether the test of control was met. They noticed that the composition of the Board of LinkedIn India had two directors that were also the directors in LinkedIn Corporation. To this effect, it was concluded that the directors cannot be controlling their own selves.[32] This was inferred to mean that the actual 'control' lay elsewhere, which they deemed was Mr. Ryan Roslansky. It was concluded that this exercise of control by Mr Ryan was the reason for it be listed as a 'Holding Company' rather than a sister concern.[33] Additionally, since Mr. Ryan would ultimately report to Mr. Satya, they would both qualify as Significant Beneficial Owners of LinkedIn India. The mere "general charge and supervision" exercised by the two entities have been deemed to be a determining factor.[34]

2. The **Test of Reporting Channels** further exemplifies the expansive approach. Some directors on LinkedIn India's Board were also directors of other entities under the LinkedIn and Microsoft groups worldwide, and their tenures were aligned with their subsequent exit from the parent entity. LinkedIn India's contention of coinciding directorship was rejected by RoC Delhi, who argued that it was intentionally done to promote nominees of the Microsoft Corporations. They held that the directors appointed in LinkedIn India would report to Mr. Ryan, who would ultimately report to Mr. Satya. The primary derivation was the existence of a chain of command leading to Microsoft Corporation with the primary intent of securing the corporation's interests.[35] The RoC argued that the "right to exercise significant control does not require there to be proof of actual existence of control."[36]

   Further, LinkedIn India denied Mr. Ryan Roslansky's control or significant influence due to his lack of ability to participate in day-to-day activities[37]. However, the RoC negated this contention using evidence such as visits to Bangalore, sharing macro-level plans about operations in India, and discussing layoffs in India. LinkedIn India argued that Mr. Ryan represented the global CEO of LinkedIn Corporation, and there were no overt actions

[31] The Companies Act, 2013 (no 18 of 2013) s 2 (87).
[32] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (43).
[33] *Ibid.*
[34] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (44).
[35] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (47).
[36] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (50).
[37] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (13).

signalling his primary intent of furthering interests in India and rather referred to the global scale of the corporation at large[38]. This was denied by the RoC.

3. Under **Test of Financial Control**, RoC descended upon the aspect of financial controls, the RoC found that notwithstanding the powers provided to the board of LinkedIn India, the exercise of financial control and certain related party were facilitated by identified employees of Microsoft Corporation[39]. This mere power to carry out financial transactions was inferred to infer direct control and supervision by Mr. Satya without control or intervention by the board of LinkedIn India[40].

   On the basis of the corroboration of these arguments, the RoC Delhi imposed a penalty of Rs. 2,700,000 on LinkedIn India, its directors and Mr. Satya and Ryan Roslansky[41].

   Now, the wide interpretation by RoC Delhi looks to breach the corporate veil to identify an SBO. The RoC's decision shows that SBO reporting cannot be viewed as a casual filing and will have to be examined in greater detail by the reporting company and members.[42] The order highlights the critical perspective of RoC whenever the parent group participates in the operations of the reporting organisation.

   It is interesting to note that RoC Delhi also countered LinkedIn India with proof of Microsoft Corporation regularly filing statement of changes in beneficial ownership of securities with the Securities and Exchange Commission (SEC) and asked LinkedIn India to show cause as to why it has not made any analogous filings required under the SBO Rules[43].

5.5. Samsung SDI Case

A similar pattern emerged, where, in February 2024, the RoC issued a notice to Samsung SDI seeking clarifications pertaining to its compliance with the SBO disclosures.

5.5.1. Samsung SDI's Contentions

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[38] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (16).
[39] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (51).
[40] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (52).
[41] LinkedIn Technology Information Private Limited, RoC Delhi, (2024) ROC 2246-2256 (57).
[42] Bomi F Daruwala and Krishna Kishore, 'Unveiling the complex web of Corporate Ownership: A Detailed Examination of Significant Beneficial Ownership and Contemporary Trends' 2(1) (2024) IBLR.
[43] Lakshmikumaran & Sridharan Attorneys, 'RoC's recent adjudication order against a global corporate – A regulatory oversight on Significant Beneficial Ownership' <https://www.lakshmisri.com/insights/articles/roc-s-recent-adjudication-order-against-a-global-corporate/#> accessed 23rd January 2025.

Samsung SDI contended that Section 90 of the Act, along with the SBO Rules, does not pertain to them, as Samsung SDI operates as a separate legal entity governed by an autonomous board of directors and professional management. They additionally contended that no individual possesses a majority stake in the ultimate holding company of Samsung SDI India, thereby asserting that it is not under substantial influence or control by any individual.

5.5.2 RoC's Observations

The RoC's investigation revealed significant gaps and inconsistencies in the company's claims. Samsung SDI has provided the details of the Ultimate Beneficial Owner (UBO) in declaration that was submitted to Citi Bank at the time of account opening and has identified Mr Myeong Gyu Choi, the Chairman and CEO of the company[44], as the UBO, which was mandated under RBI's Know Your Customer Direction, 2016[45]. The company also submitted an UBO declaration to Citi Bank stating that it is a "Closely Held Company"[46], which implies that a single natural person shareholder or beneficial owner, along with his/her relatives (defined as blood relatives, spouse, and the spouse's relatives), collectively hold more than 76% of the shares**.** The RoC noted that the concentration of ownership in a single entity should have prompted the company to take efforts to identify individuals who ultimately control that entity. SDNPL provided consolidated financial statements of Samsung Electronics Company Ltd. (SEC Korea), revealing that SEC Korea is the controlling company also owning Samsung Display Noida entirely[47]. Mr. Lee Hee and his family own approximately 21.46% of SEC Korea[48], while Mr. Lee Jae-Yong, the son of Mr. Lee Hee, holds significant stakes in key Samsung entities, inclusive of Samsung Life Insurance Co. Ltd. and Samsung C&T Corporation.

The Lee family, particularly Mr. Lee Jae-Yong, holds significant beneficial ownership under Section 90 of the Act, allowing them to steer management and decisions within the company. Therefore, SDNPL should have declared Lee Jae-Yong as an SBO after his appointment as Executive Chairman. [49]

[44] Samsung SDI India Private Limited, RoC Delhi (2024) ROC 1587-1590 (16).
[45] Know Your Customer (KYC) Directions, 2016, DBR.AML.BC.No.81/14.01.001/2015-16, s 34.
[46] Samsung SDI India Private Limited, RoC Delhi (2024) ROC 1587-1590 (10).
[47] Samsung SDI India Private Limited, RoC Delhi (2024) ROC 1587-1590 (11).
[48] Figure 2 [13]
[49] Medianama, 'Identifying the Real SBO: A critique of the LinkedIn and Samsung Orders' <https://www.medianama.com/2024/11/223-sbo-order-mca-samsung-linkedin-india/> accessed 12th January 2025

RoC Kanpur has penalised Samsung SDI, its current director, and KMP with fine of Rs. 8,14,200 and ordered to file BEN-2 within 90 days[50].

5.6. Leixir Case

5.6.1. Factual Background

Leixir Resources Private Limited and its key officers, including director William Marshall Griffin and CEO Michael Falk, were noticed by the RoC Delhi to identify and report the SBO.

Leixir India did not identify them qualifying as SBO. The company clarified that Comvest Leixir Holdings LLC was majority-owned by Comvest Investment Partners V LP and managed by Comvest Advisors LLC. Investment decisions were committee-based, with no single individual holding significant influence[51].

5.6.2. Leixir's contentions

Leixir India argued that its directors, including William Marshall Griffin, were non-executive and independent, and that Michael Falk, the CEO of the investment manager entity, did not have significant influence or control over the company's operations[52].

Leixir India opposed the application stating that its directors were not appointed as representatives of any institution or body corporate and, therefore, could not be considered nominee directors[53].

5.6.3. RoC Delhi's observation

The RoC Delhi rejected Leixir India's contentions and used a purposive interpretation of the SBO Rules. As per RoC's interpretation, the CEO of the investment manager of a pooled investment vehicle (PIV) might be deemed the SBO.[54] Hence, RoC decided that Mr. Michael Falk, as CEO of Comvest Advisors LLC, effectively exercised considerable influence or control over Leixir India.[55] This determination was further bolstered by documents submitted with the U.S. Securities and Exchange Commission (SEC), which revealed that Mr. Falk owned

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[50] Samsung SDI India Private Limited, RoC Delhi (2024) ROC 1587-1590 (18).
[51] Leixir Resources Private Limited, RoC Delhi (2024) ROC 1978-1986 (5).
[52] Leixir Resources Private Limited, RoC Delhi (2024) ROC 1978-1986 (6).
[53] The Companies Act, 2013 (no 18 of 2013) s 161 (3).
[54] The Companies (Significant Beneficial Owners) Rules 2018, G.S.R. 561(E), Explanation III(v) of Rule 2(1)(h).
[55] Leixir Resources Private Limited, RoC Delhi (2024) ROC 1978-1986 (23).

and controlled the investment management firm and was not only serving in a professional role[56].

The RoC also widened the meaning of "institution"[57] to include overseas companies. RoC concluded that the directors chosen by foreign businesses or bodies corporate might be treated as nominee directors[58]. Furthermore, RoC held that Leixir India had failed to send necessary notices[59] to its non-individual members owning over 10% of shares or voting rights, and imposed penalty of Rs. 18 Lakhs.[60]

5.7. Eider Infotech Case

5.7.1. Factual Background

The RoC Chandigarh initiated an investigation against Eider Infotech Limited, for failing to file the required e-Form BEN-2. The company was also asked to provide details of the shareholders of the company, as well as the details of the shareholders of a related company Philippines Wireless Inc.

5.7.2. Eider's Contention

Eider claimed that its non-compliance with the SBO Rules was inadvertent and due to oversight. The corporation maintained that it had no conscious purpose to withhold facts regarding its beneficial ownership. It claimed that information about the shareholders of Philippines Wireless Inc. was not available owing to no contact with the company for over two decades.

5.7.3. RoC's Observation

The RoC observed that Eider Infotech Limited and Philippines Wireless Inc. hold the majority shareholding in Eider PWI Communications Limited[61]. However, it was discovered that Shri Sanjay Sinha, Smt. Rama Sinha, and Shri A.K. Sinha controlled the company's affairs. Smt. Rama Sinha held 74.99% shares in Eider Infotech and 48.79% in Eider Financial Services Limited, while Shri A.K. Sinha held 58.21% and 39.65% in Eider Infotech and Eider Financial Services Limited. This led to Rama Sinha holding 21.29% shares and A.K. Sinha 17.30%

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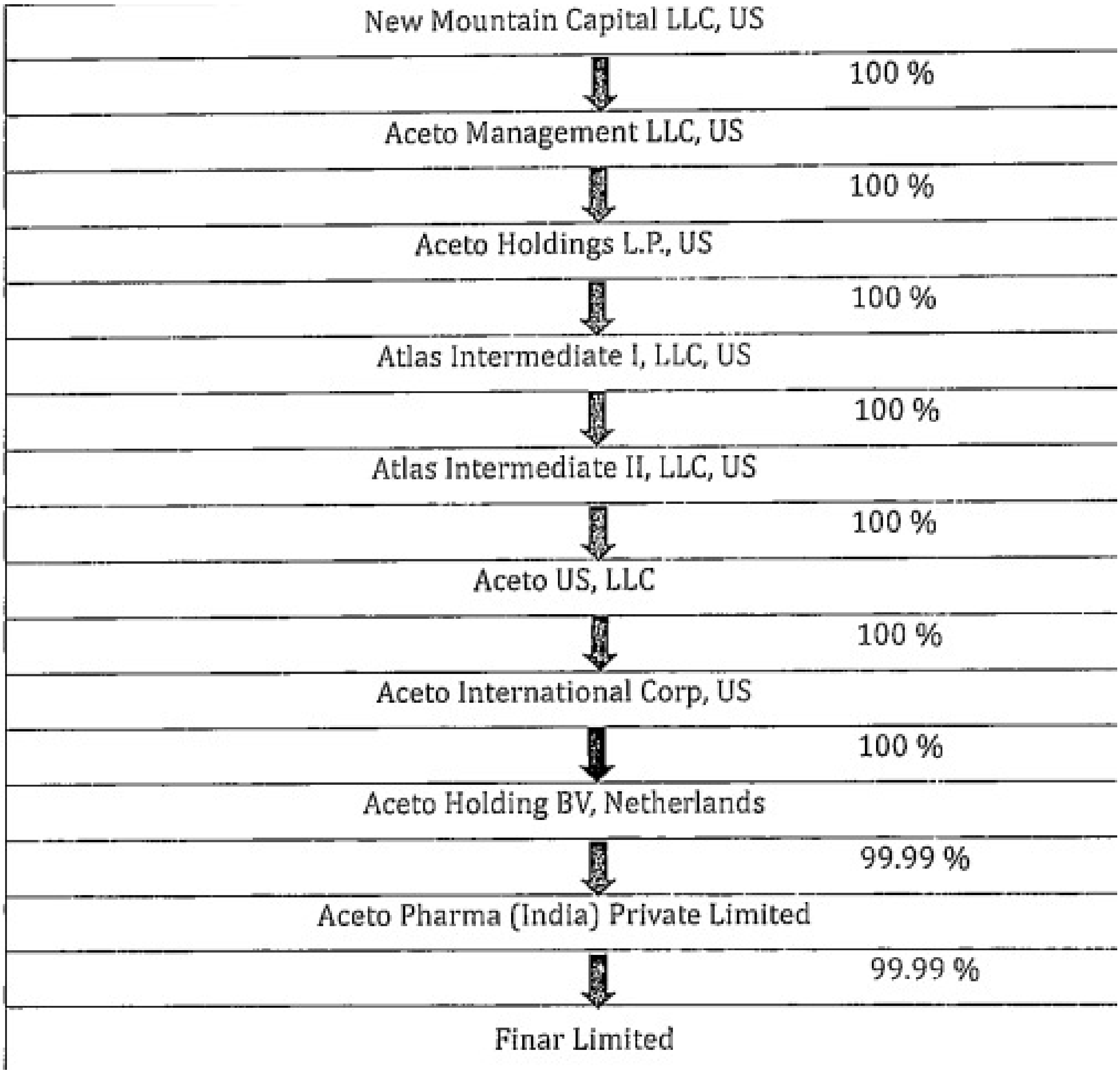
[56] Leixir Resources Private Limited, RoC Delhi (2024) ROC 1978-1986 (22).
The Companies Act, 2013 (no 18 of 2013) s 161(3).
[58] Leixir Resources Private Limited, RoC Delhi (2024) ROC 1978-1986 (24).
[59] Companies (Significant Beneficial Owners) Rules, 2018, s 2 (A).
[60] Leixir Resources Private Limited, RoC Delhi (2024) 1978-1986 (28).
[61] Eider PWI Communications Limited, RoC Chandigarh (2024) ROC 18147/202 (4).

shares in Eider PWI Communications Limited. Based on this analysis of shareholding patterns and control, the RoC concluded that Smt. Rama Sinha and Shri A.K. Sinha qualified as the SBOs of the company[62].

The RoC also noted the absence of a shareholder list for Philippines Wireless Inc., indicating no such records were found in the company's old documentation. The RoC penalised the company for failing to disclose the indirect shareholding of Rama Sinha and A.K. Sinha[63].

5.8. Finar Limited



[62] Eider PWI Communications Limited, RoC Chandigarh (2024) ROC 18147/202 (5).
[63] Eider PWI Communications Limited, RoC Chandigarh (2024) ROC 18147/202 (6).

5.8.1. Factual Background

The RoC issued notice to Finar Limited for not declaring its SBOs and upstream entities in its holding structure. Finar responded by attaching BEN-1, declaring Aceto Pharma (India) Pvt. Ltd. as the SBO. It further clarified that the identification process for upstream entities and SBOs was ongoing and that notices were being sent to them[64].

5.8.2. Finar's Contentions

Finar contended that they delayed filing form BEN-2 due to the acquisition of 100% of its shareholding by Aceto Pharma (India) Pvt. Ltd. The company's representatives argued that the ultimate holding company, New Mountain Capital LLC, is controlled by a PIV, a US-based entity, a member state of FATF and regulator. Finar argued that this clause applies to the ultimate holding company, and since it has no individual as General Partner or Investment Manager, there is no individual as SBO in the subject company[65]. Hence, Section 90 is not applicable[66].

5.8.3. RoC's Observations

The RoC observed that Mr. Steven B. Klinsky, the controller, CEO, and ultimate beneficial owner of New Mountain Capital LLC, indirectly holds over 10% of Finar Limited's shares and voting rights, making him a SBO. However, he failed to file form BEN-1. Finar Limited and its officers also failed to identify the SBO and issue notices under SBO Rules[67]. Penalty of Rs. 16,15,200 were imposed on the company, its officers, and Mr. Steven[68].

5.9. Metec India

5.9.1. Factual Background

Metec Electronics Private Limited (Metec India) was barred from entering into new agreements with companies under the Metec group based in China and Hong Kong due to its failure to comply with Sections 89 and 90 of Act. During investigations, it was revealed that a company named Metec Electronics Co. Ltd. (Metec China) shared a name and business activities with Metec India[69]. Additionally, suppliers such as Dongguan Meisen Electronics Limited[70] and

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[64] Finar Limited, ROC Pune (2024) RoC 898-904 (8).
[65] Finar Limited, ROC Pune (2024) RoC 898-904 (10).
[66] Finar Limited, ROC Pune (2024) RoC 898-904 (11).
[67] Finar Limited, ROC Pune (2024) RoC 898-904 (13).
[68] Finar Limited, ROC Pune (2024) RoC 898-904 (14).
[69] Metec Electronics Private Limited, ROC Delhi (2024) RoC 54-62 (6).
[70] Metec Electronics Private Limited, ROC Delhi (2024) RoC 54-62 (2).

Shenzhen Beyear Appliance Co. Ltd.[71] were identified as primary suppliers to Metec India, but the Company denied any relationship with these entities beyond a supplier-buyer arrangement.

5.9.2. Metec's Contention

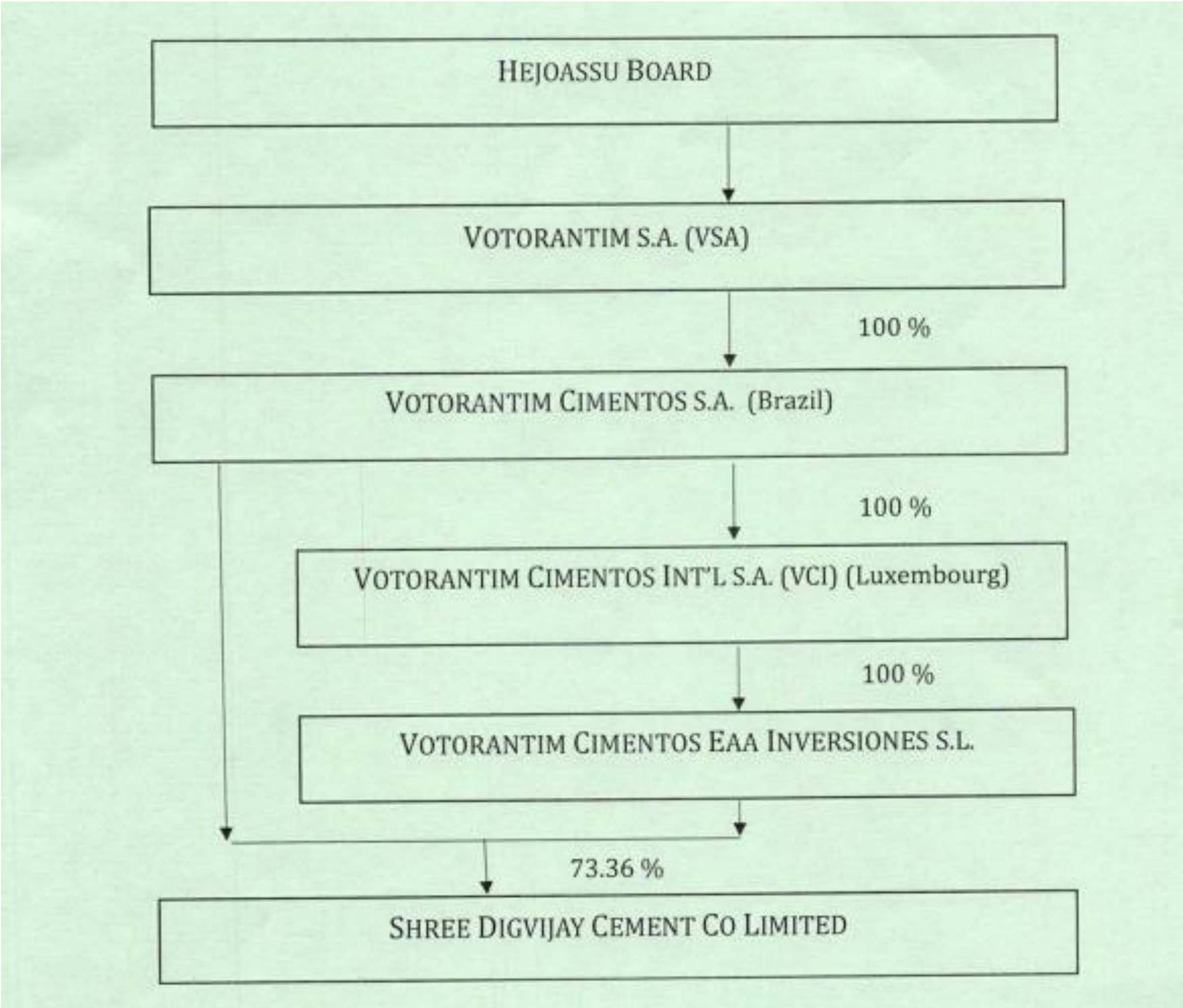
Metec India denied non-compliance, stating that it is independently incorporated by individual shareholders and has no legal connection with the Metec group of companies in China[72]. It also denied allegations that the board was not exercising its managerial powers, arguing that employees reported to senior officers for operational purposes.

5.9.3. RoC's observation

The RoC identified significant links between Metec India and the Metec group of Chinese companies. The RoC found that Metec India failed to disclose its shareholding structure, with filings attempting to obscure its ties to the Metec group. Mr. Hu Jiangping, identified as the ultimate beneficial owner of the Metec group[73], exercised control over Metec India despite lacking direct shareholding or a statutory director role. The RoC imposed penalties totalling Rs. 21,37,800 on Metec India and its officers in default, and barred them from entering into new agreements with the Metec group[74].

[71] Metec Electronics Private Limited, ROC Delhi (2024) RoC 54-62 (4).
[72] Metec Electronics Private Limited, ROC Delhi (2024) RoC 54-62 (5).
[73] Metec Electronics Private Limited, ROC Delhi (2024) RoC 54-62 (19)
[74] Metec Electronics Private Limited, ROC Delhi (2024) RoC 54-62 (36).

5.10. Digvijay Cement Company Limited Case



5.10.1. Factual Background

Shree Digvijay Cement Co Ltd., a subsidiary of True North Fund VI LLP, was notified by the ROC for failing to file the mandatory BEN-2. The company was asked to provide details of its SBOs, upstream entities in its holding structure. The company denied the applicability[75].

5.10.2. Digvijay Cement's Contention

Shree Digvijay Cement Co Ltd. argued that True North, being a SEBI-registered AIF, is exempted from SBO disclosure requirements. The company argued that the SBO Rules were not in force at the time of the share transfer to Truth North in April 2019, and the obligation to file BEN-2 only arises upon receiving a declaration in Form BEN-1, which did not occur. The

[75] Shree Digvijay Cement Co Limited, RoC Ahmedabad (2024) ROC 836-852 (6).

company claimed that Votorantim Cimentos, the promoter before 2019, was responsible for any non-compliance during its ownership.[76]

5.10.3. RoC's Observation

The ROC noted that the SBO Rules were implemented on June 13, 2018, with later modifications under the Amendment Rules, 2019, which took effect on February 8, 2019[77]. Votorantim Cimentos EAA Inversiones S.L., which possessed 73.36% and 57.17% of the company's shares in FY 2018-19, neglected to submit the obligatory BEN-2 form and did not furnish adequate information to validate its assertions. Furthermore, the ROC designated specific persons as SBOs for FY 2018-19 due to their indirect ownership. The corporation was determined to have neglected to issue notices in accordance with the SBO Rules. The ROC recognised that True North Fund VI LLP, a SEBI-registered AIF, was free from SBO disclosure obligations, yet, it concluded that the company's omission to submit BEN-2 and identify SBOs for FY 2018-19 was a substantial violation of legal compliance. Digvijay Cement was fined Rs. 24,98,400 for violations[78].

VI. IMPACT ON EASE OF DOING BUSINESS

The aforementioned cases highlight the RoC's growing focus on compliance in diverse corporate operations. Although these measures seek to enhance corporate governance and mitigate possible financial crimes while exposing systemic deficiencies in interpretation, execution and procedural transparency, which may create obstacles for companies.

For instance, in the LinkedIn case, the RoC's observation was criticized for disregarding the distinction between a company owner and a professional employee, as CEOs are hired by the company only in their professional capacities retaining their positions at the whim of Board members[79]. The ROC's subjective approach to defining "control" or "influence" in the context of professional management oversteps these well-defined boundaries. The CEO's role is one of management, not ownership. The board of directors holds the ultimate decision-making power, and the CEO's influence is secondary to this. The failure to distinguish between the

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[76] Shree Digvijay Cement Co Limited, RoC, Ahmedabad (2024) ROC 836-852 (8).
[77] Shree Digvijay Cement Co Limited, RoC, Ahmedabad (2024) ROC 836-852 (13).
[78] Shree Digvijay Cement Co Limited, RoC, Ahmedabad (2024) ROC 836-852 (15).
[79] Mondaq, 'Exploring The Interplay Between Legal And Beneficial Ownership: Insights From The LinkedIn India Case' <https://www.mondaq.com/india/corporate-governance/1555134/exploring-the-interplay-between-legal-and-beneficial-ownership-insights-from-the-linkedin-india-case> accessed 31st December 2025.

power of the board and the managerial role of the CEO only compounds the issue, confusing managerial roles with ownership control.

Holding Mr. Satya as the SBO is a far-fetched derivation setting a precedent where ultimate CEO's of parent companies of Indian subsidiaries are held liable with no rational nexus[80]. The interpretation of the ROC is wide and goes beyond any precedent. This is also the attitude adopted while adjudicating the Leixir case. This lack of parity and balance between the objective test and subjective test leaves a lot of scope for misuse of the subjective test, potentially leading to a fear of the unknown in the future. The subjective test interpretation must be clearly defined and illustrated.

On the other hand, RoC Ahmedabad's retrospective application of the Amending Rules in the case of Shree Digvijay Cement Co. Limited, creates a scenario where entities are penalised for actions or inactions that occurred under a different regulatory framework hindering the goal of achieving ease of doing business by imposing an undue burden on businesses to navigate compliance obligations retroactively.

The RoC's backward-looking approach could deter entrepreneurship and foreign investment in India which is striving to establish itself as a global player.

VII. VIS-À-VIS OTHER JURISDICTIONS

Other dominant jurisdictions such as Cyprus, the British Virgin Islands (BVI), and Mauritius, which are known for their attractive tax regimes, allow companies the possibility to maintain a certain level of anonymity regarding their Shared Business Ownership. This makes these regions suitable for holding businesses, tax optimization, and investment structuring. However, worldwide pressure is building on these governments to promote openness and strengthen disclosure processes. For instance, the BVI has established the Beneficial Ownership Secure Search System (BOSS) Act, although the information remains mostly confidential and inaccessible to the public. Similarly, while Cyprus and Mauritius have aligned with EU Anti-Money Laundering (AML) standards and established Ultimate Beneficial Ownership

[80] Mondaq, 'Understanding Compliance: Significant Beneficial Ownership (SBO) Under The Companies Act 2013: Key Cases And Insights' <https://www.mondaq.com/india/shareholders/1490684/understanding-compliance-significant-beneficial-ownership-sbo-under-the-companies-act-2013-key-cases-and-insights> accessed 15th January 2025.

registers[81], access to this beneficial ownership information is restricted to select authorities, legal entities, and individuals with a "legitimate interest," thereby preserving a level of privacy for ultimate owners.

On the other hand, UK allows robust public access to SBO information through registers like the Persons with Significant Control and the Register of Overseas Entities[82]. While access to trust data is limited and subject to a "legitimate interest" test, transparency is promoted, especially for UK related entities. India compels SBO disclosure, however public access is restricted, with data primarily available to regulatory entities.

VIII. THE WAY FORWARD

As witnessed above, the rulings of the RoC have been predominantly inconsistent which raise warning signs for vulnerabilities that could have harmful implications for companies. While this stance presently adopted may be reversed at the stage of appeal, it would be recommended for companies to prioritise compliance as a preventive measure.

This would be fairly simply while identifying SBOs through the test of shareholding. The Companies should adopt a proactive approach by requesting their shareholders who meet the SBO criteria to make necessary disclosures in a timely manner. The filing of these documents would ensure proper documentation.

The challenge becomes more nuanced when it comes to deciphering disclosures for "control" or "significant influence". To combat this, companies should maintain a comprehensive record of all documents issued by it. These records must be reviewed from time-to-time to ensure the decision-making is rooted within the board of the company. This becomes essentially important for conglomerates to confirm that the decision-making does not inadvertently root from the parent company.

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[81] George Georgiou, "Cyprus to Lift Veil of Secrecy with Register of Company Owners" (*Reuters*, 2021) <https://www.reuters.com/article/business/cyprus-to-lift-veil-of-secrecy-with-register-of-company-owners-idUSKBN2AV1FA> accessed 20 January 2025.

[82] Tracey Neuman, "Understanding the UK Beneficial Ownership Registers: What Information is Publicly Accessible" (*Ocorian*, 10 August 2023) <https://www.ocorian.com/insights-news-press-releases/understanding-uk-beneficial-ownership-registers-what-information> accessed 20 January 2025.

IX. CONCLUSION

We may take some comfort in the likelihood of the regulations being altered to address the existing inconsistencies in the framework, the process of the reform is still far away. The stakeholders should not adopt a passive attitude in light of the same.

Companies must maintain their proactive stance to seamlessly navigate through the landscape. While the government works tirelessly to ensure a regime of ease of doing business in India, these inconsistencies pose an inherent threat. Lawmakers and authorities have an additional accountability to address their inconsistencies promptly. A collaborative effort could lead to the develop of a framework that addresses its lacunae holistically. This would ensure systemic improvement resulting in a better ecosystem for corporate governance, accountability and transparency.