

भारत सरकार
कार्पोरेट कार्य मंत्रालय
कार्यालय कंपनीज़ रजिस्ट्रार, दिल्ली एवं हरियाणा
चतुर्थ तल, आई.एफ़.सी.आई. टॉवर, 61 नेहरू
प्लेस,
नई दिल्ली -110019



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE
AFFAIRS,
OFFICE OF REGISTRAR OF
COMPANIES,
NCT OF DELHI & HARYANA
4TH FLOOR, IFCI TOWER, 61,
NEHRU PLACE, NEW DELHI -
110019

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)

1. Appointment of Adjudicating Officer: -

Ministry of Corporate Affairs vide its Gazette Notification No. A-42011/112/2014-Ad.II, dated 24.03.2015 appointed Registrar of Companies, NCT of Delhi & Haryana as Adjudicating Officer in exercise of the powers conferred by section 454(1) of the Companies Act, 2013 (hereinafter known as Act) r/w Companies (Adjudication of Penalties) Rules, 2014 for adjudging penalties under the provisions of this Act.

2. Company: -

Whereas the company viz. **LINKEDIN TECHNOLOGY INFORMATION PRIVATE LIMITED** (herein after known as 'company' or 'subject company' or 'LinkedIn India') was incorporated on 31.12.2009 and has its registered office as per MCA21 Register address at **16A/20, WEA MAIN AJMAL KHAN ROAD, KAROL BAGH, NEW DELHI , Delhi , 110005, India**. The financial & other details of the subject company for immediately preceding F.Y.2022-23 as available on MCA-21 portal is stated as under:

S. No.	Particulars	Details
1.	Paid up capital (INR in Millions)	28.56
2.	a. Revenue from operation (INR in Millions)	18,314.33
	b. Other Income (INR in Millions)	419.78
	c. Profit for the Period (INR in Millions)	2402.29

3.	Holding Company	Yes
4.	Subsidiary Company	No
5.	Whether company registered under Section 8 of the Act?	No
6.	Whether company registered under any other special Act?	No

3. Facts of the Case: -

- I. It was noted that the company had filed an e-form MGT-6 vide SRN F91257345 dated 29.01.2024 wherein it is reported that LinkedIn Technology Unlimited Company is a registered holder and LINKEDIN Ireland Unlimited Company is a beneficial owner in respect of 01 share of the subject company and date of creation of beneficial interest has been shown as 11.01.2024. This ran contrary to the filings made in the financial statements of the subject company which showed that the beneficial interest had arisen much earlier. The company had also not declared its significant beneficial owner as required under the provisions of section 90 of the Act.

- II. Accordingly, a Show Cause Notice (SCN) for Adjudication dated 15.02.2024 was issued to ascertain compliances of Section 89 and 90 of the Act.

4. Adjudication proceedings for issues concerning Section 89 of the Act:-

- I. The queries [in bold] concerning the compliance of section 89 of the Act raised through the SCN dated 15.02.2024 and replies [in italics] received on 28.02.2024 are as follows:

It is observed from the record that company has filed form MGT-6 vide SRN F91257345 dated 29.01.2024 wherein it is reported that LinkedIn Technology Unlimited Company is a registered holder and LINKEDIN Ireland Unlimited Company is a beneficial owner of 01 share of the subject company and date of creation of beneficial interest has been shown as 11.01.2024. However, as per financial statement filed by the company vide form AoC-4 XBRL (SRN

F69803310 dated 20.10.2023) filed for F.Y. 2022-2023, it is mentioned that LinkedIn Technology Unlimited Company, a company incorporated under the laws of Ireland holds 1 share (0.01%) in the company as a nominee shareholder of LinkedIn Ireland.

In view of the above, declarations given under the provision of Section 89(1) and 89(2) (i.e. declaration given in MGT-4 and MGT-5) are incorrect. Further, it is seen that company was already aware of the fact that the registered owner and the beneficial owner w.r.t 1 (one) share is different. Thus, it is seen that form MGT-6 filed by company vide SRN-F91257345 is also not compliant with section 89(6) of the Act as the creation of beneficial interest predates 11.01.2024. Thus, the adjudicating officer has sufficient cause to believe that there is non-compliance of section 89.

Company's Response:

- *We would like to clarify that the beneficial ownership of One (1) equity share held by LinkedIn Technology Unlimited Company ("LinkedIn Unlimited") vests and always vested with LinkedIn Ireland Unlimited Company ("LinkedIn Ireland"). This was reaffirmed when LinkedIn India underwent an amalgamation with Uzanto Consulting India Private Limited in 2014. At the time of the merger, the beneficial ownership in respect of One (1) equity share held by LinkedIn Unlimited was reaffirmed to be in favour of LinkedIn Ireland and was duly disclosed to the High Court, the Registrar of Companies and other statutory authorities.*
- *Under the new Companies Act, 2013, the existence of this beneficial ownership has been noted in the annual returns filed since FY 2014-2015.*
- **Rationale for filing form MGT-6** - *In light of Section 89(2) which states "Every person who holds " we erred on the side of caution and filed form MGT-6 vide SRN F91257345 dated 29.01.2024. However, we note the date of creation has erroneously shown to be January 11, 2024, since the declaration(s) were submitted on the said date.*

As you have correctly noted under the SCN, this has always been in existence as set out in the annual filings. As this appears to be either

not required to be filed or is creating an ambiguity, LinkedIn India stands to withdraw the filed form MGT-6 vide SRN F91257345 dated 29.01.2024 and seeks your accommodation for the withdrawal. Both, LinkedIn Ireland and LinkedIn Unlimited, owing to abundance of caution and the language of Section 89(1) and (2) of the Companies Act, had submitted their declaration(s), due to the potential ambiguity in the interpretation of Section 89.

- *Based on our response above, the statement mentioned as per the financial statements filed for FY 2022-2023 and previous financial years are correct where LinkedIn Ireland is the beneficial owner of One (1) equity share held by LinkedIn Unlimited.*
- *As mentioned earlier, to err on the side of caution, both LinkedIn Technology and LinkedIn Ireland had made their declaration(s) on 11.01.2024. while the date of creation of beneficial interest is mentioned as 11.01.2024, as per our response above, this has already been in existence since 2014.*
- *Based on the above responses, we trust we have clarified the position of LinkedIn India on the above declarations and subject to the consent of your good office, we would be glad to withdraw the form MGT-6 filed vide SRN-F91257345 given that LinkedIn Unlimited had historically declared the beneficial ownership in favour of LinkedIn Ireland and ensured that its corporate records are in alignment of this beneficial ownership,*
- *We request your good office to kindly consider the rationale for the recent filing, which in our opinion, show cause that LinkedIn India has not committed a non-compliance under Section 89 as stipulated under the SCN.*

II. The reply given by the subject company was found to be unsatisfactory. Thus, vide an email dated 04.03.2024, the company was asked to furnish the reasons for providing incorrect information in the e-form MGT-6 [SRN-F91257345] and its attachments w.r.t the date of creation/acquisition of beneficial interest in the shares. A hearing was also scheduled on 12.03.2024.

III. In its reply dated 12.3.2024, the subject company stated as follows:

LinkedIn India opted for a cautious approach and reaffirmed the beneficial ownership interest in favour of LinkedIn Ireland Unlimited Company, due to section 89 (2) of the Companies Act 2013, which uses the phrase every person who hold consequently LinkedIn India filed form MGT 6 via SRN F91257345 on 29.01.2024 to prevent any confusion.

The beneficial ownership of one (1) equity share held by LinkedIn Technology Unlimited Company has always vested with LinkedIn Ireland Unlimited Company a fact consistently reflected in the annual filings however it's noted that the date of creation was erroneously indicated as 11.01.2024 due to submission of the declaration on that date.

- IV. On the date of hearing on 12.03.2024, the authorized representatives of the company appeared and they reiterated the written submissions made by them.

5. Analysis of the non-compliance of section 89 of the Act

- I. The reply of the company suggests that LINKEDIN IRELAND UNLIMITED COMPANY was always the beneficial owner in respect of the **One share** held by LINKEDIN TECHNOLOGY UNLIMITED COMPANY [as a registered owner]. Thus, the duty of the beneficial owner and the registered owner to make declarations actually arose after the incorporation of the company in 2009. The registered owner and the beneficial owner ought to have made these filings in accordance with the provisions of section 187C of the Companies Act, 1956 in Form 22B, which was the relevant form for filing such declaration at the time when the beneficial interest actually arose.
- II. The company has itself admitted that the date of creation of beneficial interest has been erroneously declared in the Form MGT-4 and Form MGT-5 by the registered owner and the beneficial owner as 11.01.2024.
- III. There is no question of withdrawal of the e-form as the company was supposed to file this e-form as per the requirements of law. However, the declarations filed by both the registered owner and the beneficial do not abide by the requirements of sub-section (1) and sub-section (2) of section 89, insofar as the timelines for filing the declarations have not been met and the date of creation of beneficial interest is also erroneous, a position also admitted by the company during the proceedings.
- IV. Section 89(5) provides for penalty against the registered holder of shares and beneficial holder of shares if the declarations have not been made as required under sub-section (1) or sub-section (2) of section 89. Clearly by incorrectly

disclosing the date of acquiring the beneficial interest, the provisions of as required under sub-section (1) or sub-section (2) have not been met. The date of default is being reckoned subsequent to the period of decriminalization of the provision w.e.f. 21.12.2020 and upto the date of issue of SCN on 15.02.2024.

6. Adjudication proceedings for issues concerning Section 90 of the Act:-

A1. Issue of SCN to the company on 15.02.2024

The queries [in bold] concerning the compliance of section 90 of the Act raised through the SCN dated 15.02.2024 and replies [in italics] received on 28.02.2024 are as follows:

It is seen that Microsoft Corporation, USA (ultimate holding company) is regularly filing statement of changes in beneficial ownership of securities with Security & Exchange Commission (SEC) (weblink : <https://www.microsoft.com/en-us/Investor/sec-filings.aspx?year=2023&filing=xbrl> . However, the subject company has not filed any eform BEN-2 on MCA 21 portal as required under Section 90 of the Act and rules made thereunder.

Company's Response:

As far as Section 90 of the Companies Act is concerned, it is our understanding that it applies to cases: (1) when an individual directly or indirectly holds 10% of the shares of a company: (2) when the shares of a company are held by a body corporate, whether there exists an individual who holds majority stake in the member, being a body corporate, or holds majority stake in the ultimate holding company of the member of the company. In our case, there is no individual who is a shareholder of LinkedIn India. Secondly, the ultimate holding company is Microsoft Corporation, USA, a listed body corporate, where it is publicly reported that no individual holds a majority stake.

Accordingly, the adjudication officer has reasonable cause to believe that provision of section 90 and rules made thereunder have not been complied. Now, the company and concerned persons are required to furnish following information with supporting documents for further Adjudication proceedings:

Whether the company has received any declaration pursuant to sub-section (1) of Section 90 of the Act. If yes, provide the copy of such declaration along with proof of receipt for the same.

Company's Response: *No, LinkedIn India has not received any declaration pursuant to sub-section (1) of Section 90 of the Companies Act as there are no significant beneficial owner(s), to the knowledge of LinkedIn India.*

Whether the company has filed form BEN-2 in terms of sub-section (4) of Section 90 of the Act. If yes, provide the copy of the same. If no, provide reasons with supporting documents.

Company's Response: *No, LinkedIn India has not filed form BEN-2 in terms of subsection (4) of Section 90 of the Companies Act, as no person has filed, declared itself/himself or herself to be a significant beneficial owner.*

Provide details of all the actions taken by the company to identify Its Significant Beneficial Owner in terms of section 90 of the Act.

Company's Response: *Even prior to the notification of the Companies (Significant Beneficial Owners) Rules, 2018, LinkedIn India had undertaken an exercise at the time of Microsoft Corporation's acquisition of LinkedIn Corporation, to identify if there were any individual(s) who individually or along with a trust or any other person held 10% or more of the beneficial interest indirectly in LinkedIn India to which it was found that in Microsoft Corporation, the ultimate holding company, there were no single entity or individual that controlled 10% or more of the shareholding of Microsoft Corporation and thus there were no person who held any significant beneficial ownership. Since 2016, LinkedIn India continuously verifies the beneficial ownership records of Microsoft's Corporation's shareholding pattern as available on public records. Based on public records, LinkedIn India had no reasonable cause to believe that there is any individual who is a significant beneficial owner of LinkedIn India.*

Provide details of the individual(s) [name, PAN (if any), DIN (if any), Passport number, Nationality, correspondence address, email address] who exercise(s) control or significant influence on the company in terms of the provisions of section 90 of the Companies Act, 2013 r/w rules made thereunder.

Company's Response: *Based on the reasons stated above, LinkedIn India is not aware of any such individual(s). LinkedIn India is managed by a professional board of directors.*

Did the company comply with the mandatory compliance of issuing a BEN-4 notice as required in rule 2A(2) of the Companies (Significant Beneficial Owners) Rules, 2018? If no provide reasons thereof.

Company's Response: *Based on our above responses, LinkedIn India under Section 90(4A) and 90(5) did not have any reasons to believe that there are any individuals who hold significant beneficial ownership of LinkedIn India. Therefore, there was no further enquiry made under Form No. BEN-4.*

Provide details of all the BEN-4 notices issued by the company, along with a copy thereof. You are also required to provide a copy of the replies received in this regard. For all correspondences, provide a dispatch proof and proof of receipt on the part of the company. Also furnish the information in the following format in respect of each BEN-4 notice issued by the company:

Company's Response: *As stated above, LinkedIn India had no reasonable cause to believe that there are any significant beneficial owners of LinkedIn India.*

Provide the details of the application moved by the company to the NCLT in terms of section 90(7) of the Act r/w rule 7 of the Companies (Significant Beneficial Owners) Rules, 2018, on the ground that no reply was received on the BEN-4 notice issued by it, or the reply that was received was unsatisfactory. If no such application was moved, provide the reasons thereof.

Company's Response: *No such application was moved by LinkedIn India based on our assessment as stated above.*

It is seen that LinkedIn Ireland Unlimited Company is a member/shareholder of the company holding 100% or shares in the subject company as per Annual Returns filed for the financial year ending on 31.03.2022 and 31.03.2023 and thus falls in the description provided in clause (i) of Explanation III to rule 2(1)(h) of Companies (Significant Beneficial Owners) Rules, 2018. Please provide the details of all the upstream entities [name of the entity, country of registration/incorporation, unique identification number allotted by the respective registry] right up to the ultimate holding company along with the details of shareholdings in respect of each layer of shareholding. Also provide the details of the individual who holds majority stake in the ultimate holding company.

Company's Response: *Please see below the requested details of the upstream entities of LinkedIn India. Ultimately all group entities are wholly owned subsidiaries of Microsoft Corporation.*

<i>Name of entity</i>	<i>LinkedIn Ireland Unlimited Company</i>
<i>Country of registration</i>	<i>Ireland</i>
<i>Date of formation</i>	<i>November 11,2009</i>
<i>Registered office</i>	<i>70 Sir John Rogerson's Quay Dublin 2, Ireland</i>
<i>Registration number</i>	<i>477441</i>

<i>Name of shareholders</i>	<i>Microsoft Ireland Research Unlimited Company</i>	<i>LinkedIn Worldwide</i>
<i>Percentage of holding</i>	<i>99%</i>	<i>1%</i>

<i>Name of entity</i>	<i>LinkedIn Technology Unlimited Company</i>	
<i>Country of registration</i>	<i>Ireland</i>	
<i>Date of formation</i>	<i>November 11,2009</i>	
<i>Registered office</i>	<i>70 Sir John Rogerson's Quay Dublin 2,</i>	
<i>Registration number</i>	<i>477442</i>	
<i>Name of shareholders</i>	<i>Microsoft Ireland Research Unlimited Company</i>	<i>LinkedIn International</i>
<i>Percentage of holding</i>	<i>99%</i>	<i>1%</i>

<i>Name of entity</i>	<i>LinkedIn Worldwide</i>
<i>Country of registration</i>	<i>Isle of Man</i>
<i>Date of formation</i>	<i>August 28, 2013</i>
<i>Registered office</i>	<i>19-21 Circular Road, Douglas, Isle of Man</i>
<i>Registration number</i>	<i>010097F</i>
<i>Name of shareholder</i>	<i>Microsoft Ireland Research Unlimited Company</i>
<i>Percentage of holding</i>	<i>100%</i>

<i>Name of entity</i>	<i>LinkedIn International</i>
<i>Country of registration</i>	<i>Isle of Man</i>
<i>Date of formation</i>	<i>August 28, 2013</i>
<i>Registered office</i>	<i>19-21 Circular Road, Douglas, Isle of Man</i>
<i>Registration number</i>	<i>010098V</i>
<i>Name of shareholder</i>	<i>Microsoft Ireland Research Unlimited</i>
<i>Percentage of holding</i>	<i>100%</i>

<i>Name of entity</i>	<i>Microsoft Ireland Research Unlimited</i>
<i>Country of registration</i>	<i>Ireland</i>
<i>Date of formation</i>	<i>April 25, 2001</i>
<i>Registered office</i>	<i>70 Sir John Rogerson's Quay Dublin 2, Ireland</i>
<i>Registration number</i>	<i>342235</i>
<i>Name of shareholder (beneficial holder)</i>	<i>Microsoft Corporation</i>

Shareholding of Microsoft Ireland Research

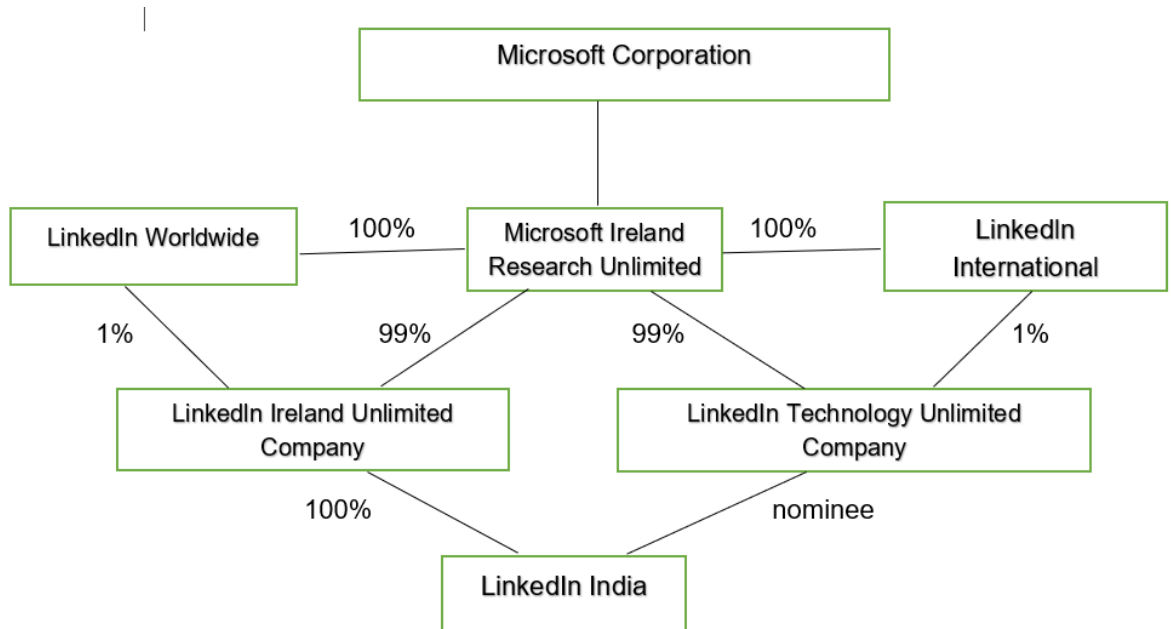
It is to be noted that Microsoft Ireland Research Unlimited Company is a subsidiary of Microsoft Corporation.

Shareholding of Microsoft Corporation

We would like to bring to your attention that there are no individuals who hold in excess of 10% stake in Microsoft Corporation. The above can also be verified through other various filings made with the Securities Exchange Commission and public sources, which was also undertaken by LinkedIn India from time to time, to ensure that there is no significant beneficial owner in LinkedIn India. Microsoft Corporation is run by a professional board and is not controlled by any single individual who has the right to exercise, or actually exercises, significant influence or control, in Microsoft Corporation.

A2. Analysis of company’s reply to the SCN dated 15.02.2024

- I. The reply of the company is centered around the argument that there is no individual who holds a majority stake in the ultimate holding company [Microsoft Corporation]. Thus, the company does not have any SBO.
- II. This position clearly ignores the other facet whereby a SBO is identified through the test of control or significant influence. Rule 2(1)(h) of the Companies (Significant Beneficial Owners) Rules, 2018 clearly provides for identification of a SBO where the individual has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.
- III. On the basis of the reply of the company, the holding structure of the subject company can be understood using the following chart:



- IV. Another point to be noted from the reply of the company is that LinkedIn Corporation does not figure anywhere in the layer of upstream entities. It needs to be emphasized that till the acquisition of LinkedIn by Microsoft on 8th

December, 2016, LinkedIn Corporation was the ultimate holding company of the subject company. Till date, the subject company continues to report LinkedIn Corporation as its holding company in its financial statements.

- V. It is also apparent that despite the mandatory provisions under rule 2A(2) of the Companies (Significant Beneficial Owners) Rules, 2018, the company did not send the notice as per Form BEN-4 to LinkedIn Ireland Unlimited Company [member of the subject company which holds its entire share capital], leading to a contravention of section 90(5) for which penalty has been provided under section 450. Also, in general the company and its officers failed to take necessary steps to identify its SBO leading to a violation of section 90(4A) of the Act, for which penalty is provided under section 90(11).

B1. Queries raised vide email dated 04.03.2024 and its reply

The queries [in bold] vide email dated 04.03.2024 and its corresponding reply (received on 12.03.2024 in italics) are as under:

The clause 61 and clause 62 of the Articles of Association of the company provides as under:

61. The Board may, from time to time, appoint such other officers, who may or may not be Directors of the Company, as it thinks fit.

62. The Board of the Company may from time to time authorize such Directors or officers of the Company as it may think appropriate to create binding commitments on behalf of the Company including for execution of all contracts, correspondence and agreements between the Company and any other entity.

You are required to provide the details of the "officers" as referred to clause 61 and 62 along with the powers and duties assigned to them.

Company's response: *The oversight and management of LinkedIn India are conducted by its Board of Directors ("Board"). The Board has entrusted various day-to-day administrative and operational duties to different officers, including Mr. Ashutosh Gupta (Executive Director) and Mr. Sagar K S. who are responsible for executing all contracts, correspondence, and agreements. These officers operate under the guidance and supervision of the Board, adhering to its instructions and directives. Given below are the details regarding these officers as requested.*

Name: Ashutosh Gupta

Nationality: Indian

*E-mail ID: *****@linkedin.com*

PAN: *****

Employment status: Employee of LinkedIn India

Whether nominee of the holding company: Not applicable

Name: Sagar K S

Nationality: Indian

E-mail ID: ***@[linkedin.com](mailto:***@linkedin.com)

PAN: *****

Employment status: Employee of LinkedIn India

Whether nominee of the holding company: Not applicable

Whether the Board of Directors of the subject company report to any person. If yes, provide the details of such person

Company's response: *The Board of LinkedIn India operates independently and does not report to any person. The financials of LinkedIn India get consolidated with its ultimate holding company, as and if required under applicable law.*

Whether any director of the company is a nominee of the holding company or the ultimate holding company. If yes, provide details in respect of each of such individual and his/her relationship with the nominator entity.

Company's response: *None of the directors of LinkedIn India have been nominated by either the holding company or the ultimate holding company. The Board of LinkedIn India selects directors with expertise in finance and law from among Microsoft employees. These individuals are identified by LinkedIn India's board and are invited to join. Upon acceptance, they are formally appointed to the Board as per the provisions of the Companies Act, 2013.*

Whether there is any agency/committee/any other body of persons other the Board of the company, which exercises powers in respect of execution of the works of the company. If yes, then provide the name of such agency/committee/any other body of persons, its role and functions, and provide the details of all persons comprising of such agency/committee/any other body of persons.

Company's response: *Apart from the Board of LinkedIn India, no other agency, committee, or group of individuals holds authority over the execution of LinkedIn India's operations. As mentioned in our response to point (b), various officers are authorized by the Board of LinkedIn India to fulfill specific duties and responsibilities, and they act in accordance with the instructions, directions and under the supervision of the Board.*

On the website of LinkedIn [https://about.linkedin.com/?trk=homepage-basic_directory_aboutUrl] the following information has been provided:

Who are we?

LinkedIn began in co-founder Reid Hoffman's living room in 2002 and was officially launched on May 5, 2003. Today, LinkedIn leads a diversified business with revenues from membership subscriptions, advertising sales and recruitment solutions under the leadership of Ryan Roslansky. In December 2016, Microsoft completed its acquisition of LinkedIn, bringing together the world's leading professional cloud and the world's leading professional network.

Therefore, you are required to specifically state as to whether Mr. Ryan Roslansky holds "control" or "significant influence" in the subject company. You may note that an individual may exercise "control" or "significant influence" in a company without holding any shares in it.

Company's response: Please note that Mr. Ryan Roslansky serves as the CEO of the LinkedIn division within Microsoft. However, Mr. Ryan Roslansky does not participate in the day-to-day decision-making processes of LinkedIn India, which operates under the oversight and direction of its own Board. Mr. Ryan Roslansky does not independently or individually exert any control or significant influence over the operations of LinkedIn India. He is neither on the board of LinkedIn India or attends or gives directions relating to day-to-day operations of LinkedIn India.

B2. Analysis of company's response

- I. The company gave the names of only two individuals who were specifically authorized under Clause 61 and 62 of the Articles of the company. Later on perusal of the records of the company it was seen that there were other officers who were specifically authorized by the Board but the details of those officers were not shared with this office.
- II. The company denied that it has appointed any nominee directors to represent the holding company or its ultimate holding company. It rather stated that all appointments were done from amongst the Microsoft employees by the Board of the subject company. This aspect will be dealt in greater detail in the later part of the order, where it is seen that the submission of the subject company

that it “selects” the employees of Microsoft for appointment on its Board is not accurate.

- III. As regards Mr. Ryan Roslansky, the reply of the company was limited to the aspect of him not taking part in the day-to-day operations of the subject company, and that he did not independently and individually exert control or significant influence. The reply was certainly not satisfactory as the law does not provide that an SBO must necessarily take part in the day-to-day operations of a company or have direct control over the affairs of a company. It is clear that control, or the right to exercise such control or significant influence indirectly also tantamount to exercise of control and significant influence.

C1. Queries raised during the hearing on 12.03.2024 and its reply

In view of submissions made by the authorized representatives of the company during the hearing held on 12.03.2024, the following additional queries [in bold] were raised vide email dated 12.03.2024, against which the reply [in italics] was received on 19.3.2024, which is as under:

It is stated that Mr. Sagar K S, who does not hold any board level position in company is authorized to execute contract, etc. on behalf of the company. In this regard you are required to provide sample copies of such contracts/agreements/correspondences. Also provide a copy of the terms and conditions separately executed between the company and Mr. Sagar K S which empowers him to act on behalf of the company.

Company's Response: *Please refer to the below authorizations granted by the Board of LinkedIn India in favour of Mr. Sagar which empowers him to act for and on behalf of LinkedIn India.*

(a) *Circular resolution dated February 16, 2021: As per item no.2 and no.3, Mr. Sagar was granted authorization to execute, for and on behalf of LinkedIn India, all relevant documents in relation to (i) commercial agreements or arrangements involving LinkedIn India; (ii) Software Technology Park of India license; (iii) Service exports from India scheme; (iv) Other service provider license; (v) meeting the corporate social responsibility obligations on behalf of LinkedIn India; (vi) GWS – related documents; and (vii) any other statutory compliance document including, but not limited to, any LEIN renewal.*

(b) Board meeting dated January 13, 2022: As per item no.10, Mr. Sagar was granted authorization to renew the legal entity identifier registration on behalf of LinkedIn India.

(c) Board meeting dated March 13, 2023: Mr. Sagar was granted authorization for the execution and registration of a lease deed for and on behalf of LinkedIn India.

****Certain contracts executed by Mr. Sagar were provided in the Annexure to the reply****

It is seen from your reply that the Board of LinkedIn India has selected directors with expertise in various disciplines especially in finance and law from among the Microsoft employees and you have stated that Microsoft employees are not nominees of Microsoft. So you are required to clarify as to whether Microsoft is unaware that their employees have taken Board level position in LinkedIn India and whether Microsoft can exercise its power and ask its employee to not join the board of LinkedIn India. You are required to once again explain as to why the employees of Microsoft appointed as directors in LinkedIn India will not be considered as nominee directors of Microsoft, as the financial statements clearly disclose that Microsoft Corporation is having control over the subject company with effect from December 8, 2016.

Company's Response: *Microsoft is aware that its employees are appointed on the board of LinkedIn India. The board invites selected Microsoft employees with specific financial or legal expertise to be appointed to the board. As per the internal policies of Microsoft, Microsoft employees are permitted to act as directors of a Microsoft group entity. We would like to submit that a mere right to reject the ability of an entity to its employee from becoming a director in another entity (whether related or not), would not make such person the nominee of such entity.*

Microsoft exercises control over LinkedIn India as the ultimate holding company by virtue of shareholding of its subsidiaries, details of which has been provided in the earlier response.

With regard to issue as to whether Mr. Ryan Roslansky holds control or significant influence in the company, you have denied the same by stating that he does not participate in day-to-day decision making process of LinkedIn India. However, it is noted that Mr. Roslansky had come to India in November 2022 and visited your office in Bangalore where he met employees and customers. Several news articles and

videos with regard his visit in India are available on the public domain which shows that Mr. Roslansky had shared his macro level plans about the Indian operations. He had spoken on length on the issue as to whether LinkedIn India is considering layoffs in India or not. He had also highlighted the importance of India company wherein he stated that close to 700 employees in India are working on R&D which is critical to LinkedIn globally. You are required to clearly state as to whether these 700 employees are on the payroll of the LinkedIn India or they are on the role of LinkedIn corporation.

Few articles and videos as available in the public domain are given below which you may rely upon while giving the reply.

I. https://www.youtube.com/watch?v=n_gCqnwXPOY

II. <https://www.youtube.com/watch?v=2ilQyzATEWc>

III. <https://timesofindia.indiatimes.com/business/india-business/indians-networking- morethan-most-linkedin-ceo/articleshow/95497158.cms>

Company's Response: *We wish to clarify that Mr. Roslansky visited the offices of LinkedIn India in his capacity as the newly appointed global CEO of LinkedIn Corporation. During his visit, aside from conducting meet-and-greet sessions with employees and meetings with customers who are subscribers on the LinkedIn platform (not specific to LinkedIn India), Mr. Roslansky did not engage in any meetings where he provided instructions or directions related to LinkedIn India, as he lacks the authorization from the board to issue such directives. Based on feedback from LinkedIn India personnel, he did express optimistic views about India publicly, including plans for expanding the R&D team in India. It's important to note that such expansions are contingent upon contracts executed with other Microsoft entities, as reflected in the financial statements below, and are subject to relevant approvals within LinkedIn India, which operates under the supervision of the board of directors of LinkedIn India.*

His statements regarding the expansion of the R&D team do not in any manner imply control over policy or day-to-day management decisions specific to LinkedIn India, which are the purview of the board of directors of LinkedIn India. Upon thorough review of Mr. Roslansky's interviews and press clippings, it's apparent that his remarks were made referring to LinkedIn as a group and not specifically to LinkedIn India. He referred to India as a revenue center and market for LinkedIn on a global scale, rather than specifically addressing LinkedIn India, as LinkedIn India does not manage the platform. When Mr. Roslansky referred to the 'Company' in his interviews, he was alluding to LinkedIn as a group, not singling out LinkedIn India. This can be ascertained when he uses LinkedIn and the Company interchangeably while discussing

closure of fiscal year, revenue, subscriber base, and other metrics, which are not attributable to LinkedIn India.

Further, we would like to clarify that Mr. Roslansky had spoken about the lay-offs at global level in LinkedIn and not specific to LinkedIn India. In relation to the R&D employees in India, we would like to clarify that 700 was an approximate number which changes from time to time depending on new hires and/or exits in the company.

On perusal of the financial statement of the subject company for FY 2021-22, it is seen that the company has given following disclosures with respect to its revenue from operations:

S. No	Name and Description of main products/services	NIC Code of the Product/service	% to total turnover of the company
1	Fees from Marketing Services *	99831173, 99837001 99831210	54.75%
2	Fees from Contract Research & Development Services	99811292	37.69%
3	Fees from Customer Support Services	99831175	7.57%

These disclosures show that the company is earning sizeable amount of revenue from the R&D operations. So, it may be clarified as to whether the R&D operations in India are not influenced by any factors existing outside India. Also, whether Mr. Roslansky has no role in any critical decision-making with regard to the operations of the subject company.

Company's Response: *The marketing and R&D operations of LinkedIn India are carried out in accordance with contracts executed by LinkedIn India with various entities of the Microsoft group, including LinkedIn entities, under long-term agreements with such affiliates or related parties. These R&D contracts have been duly approved by the board of directors of LinkedIn India.*

In light of the above authorization, we wish to confirm that aside from the counterparties and their advisors (both in tax and legal matters), no other parties were involved in the execution and fulfillment of these transactions.

It's pertinent to note that some of these revenue generating contracts pre-date Mr. Roslansky's appointment as the CEO of LinkedIn Corporation, thereby excluding his direct or indirect involvement or influence in decision making relating to these contracts.

As previously stated, Mr. Roslansky serves as the global CEO of the LinkedIn Group. The business operations of LinkedIn India operate under the decentralized supervision of the LinkedIn India board. While LinkedIn India

operates within the overarching policies of the group, these policies are implemented under the oversight of the Board.

It's important to clarify that Mr. Roslansky does not make specific day-to-day management or policy decisions pertaining to the business operations of LinkedIn India. Therefore, he does not exercise direct control or significant influence over LinkedIn India's operations.

The following disclosures made by the subject company under the related party transactions may be noted:

The following table is the summary of significant transactions with related parties by the Company:

	As at March 31, 2022	As at March 31, 2021
Sale of marketing services		
LinkedIn Singapore Pte Ltd	7,052.07	4,375.65
Sale of research and development services		
LinkedIn Ireland Unlimited Company, Ireland	4,854.69	3,411.36
Sale of customer support services		
LinkedIn Singapore Pte Ltd	974.86	626.36
Payments made on behalf of related party		
LinkedIn Corporation, USA	1,105.73	1,006.04
Payments made by related party on behalf of the Company		
Microsoft India R&D Pvt. Limited	0.87	-
LinkedIn Corporation, USA	436.69	338.04
LinkedIn Singapore Pte Ltd	149.34	2.00

It is seen that the subject company has made transactions on behalf of the related parties and similarly the related parties have made transactions on behalf of the subject company. You are required to state as to whether these transactions did not involve actors outside the Board of the subject company, if so then please indicate their role alongwith supporting documents.

Company's Response: *As previously communicated, LinkedIn India collaborates with various entities within the Microsoft group, including LinkedIn entities, under long-term contracts that have been duly executed with affiliated or related parties. These contracts have received approval from the board of directors of LinkedIn India.*

In accordance with the authorization provided, we wish to confirm that aside from the counterparties and their advisors (both in tax and legal matters), no other parties were involved in the execution and fulfillment of these transactions.

C2. Analysis of company's response

- I. A copy of the agreement provided by the company [signed by Sagar K.S.] shows that it is an agreement entered into by the subject company with a supplier provide event management, project management, and booth set-up services for an event for the LinkedIn Legal and Public Policy and Economic Graph team. Interestingly, there is a clause in the agreement which states as under:

NOTICES. Notices to LinkedIn should be sent to Legal Department, c/o LinkedIn Corporation, 1000 W. Maude Ave., Sunnyvale, CA 94085, U.S.A.

- II. The same clause was visible in other agreements referred to as Statement of Work between the subject company and the third parties. It has already been noted above that LinkedIn Corporation, USA does not figure in the layers of upstream entities of the subject company in terms of shareholding, yet it has been consistently shown as a holding company. This issue will be dealt at length in the later part of the order.
- III. The reply of the company with regard to the issue of nominee directors remained unclear, it completely failed to establish that the employees of

Microsoft working in the subject company as directors would remain independent. This issue will be dealt at length in the later part of the order.

- IV. Earlier the company had replied that Mr. Ryan Roslansky serves as the CEO of the LinkedIn division within Microsoft. Now in its reply, the company submitted that he is the “global CEO” of LinkedIn Corporation and at other place he is referred as the “global CEO” of the “LinkedIn Group”. The designation itself indicates the sphere of influence of Mr. Roslansky. The company also admitted that the Mr. Roslansky referred to the whole group in his statements and not just the subject company, which indicates of his role as a “global CEO”.
- V. The subject company also denied the presence of external influence in entering into contracts, as well as the fact that it was making and receiving payments for/from related parties. The presence of influence would be analyzed in the later part of the order and from the attending circumstances and other information on record.

D1. Queries raised e-mails dated March 20, 2024 and March 21, 2024 followed by the oral hearing on April 01, 2024 and its reply

The issues raised in the queries [in bold] and the reply of the company [in italics] are as follows:

You have admitted that Microsoft has a right to reject the ability of an entity to appoint its employee as a Director in such entity. It is apparent that such right can only be exercised by Microsoft over the person whom it controls. You are also required to refer to the explanation to Section 149(7) of the Companies Act, 2013 which clearly states that the Nominee Director can be appointed by any other person to represent its interest. It is clear that while exercising its right to reject, Microsoft would normally take into account its interest which are supposed to be safeguarded by its employee while being appointed in LinkedIn.

Company's Response: LinkedIn India does not have insight on the considerations that Microsoft takes into account while deciding whether to reject an employee from serving as a director to an entity, or on the request of an employee to become a director either in a group entity or entities outside

the group. We reiterate that a decision to not reject an employee from serving on a board does not mean that Microsoft nominated the employee.

For example, if an executive director of a listed company becomes a non-executive director or independent director of another company which is not affiliated with the said listed company, with the permission of its board where such person is a managing or executive director, then such person does not become the nominee of the company in which he/she is a managing director solely based on the ability of the listed company to grant its approval to the director to become a director in the non-affiliated entity.

You have admitted that Mr. Roslansky had referred to LinkedIn as a Group during his interviews and press clippings. This is precisely the issue raised by this office in its email dated 04.03.2024 wherein the following extract of the website of LinkedIn was reproduced:-

Who are we?

LinkedIn began in co-founder Reid Hoffman's living room in 2002 and was officially launched on May 5, 2003.

Today, LinkedIn leads a diversified business with revenues from membership subscriptions, advertising sales and recruitment solutions under the leadership of Ryan Roslansky. In December 2016, Microsoft completed its acquisition of LinkedIn, bringing together the world's leading professional cloud and the world's leading professional network.

This shows the overall leadership role of Mr. Ryan Roslansky in the LinkedIn Group of which LinkedIn is a part.

Company's Response: *Mr. Ryan Roslansky is the CEO of LinkedIn Corporation, with LinkedIn India as one of its indirect subsidiaries. Being the CEO of LinkedIn Corporation, which in turn is owned and controlled by Microsoft Corporation, Mr. Roslansky serves as an employee of LinkedIn Corporation pursuant to an employment agreement with the said entity and reports to the board of LinkedIn Corporation. His role draws its authority and is subject to supervision of the board of LinkedIn Corporation and its controlling shareholder i.e. Microsoft Corporation. He does not, in any form or manner, exercise any independent or individual control or influence which is outside the supervision of the board of directors of LinkedIn Corporation and Microsoft Corporation.*

Your reply also appears to be misleading as you have stated that Mr. Roslansky does not, in any manner, controls the day-to-day

management decisions of LinkedIn. You may note that this issue has never been raised by this office. In fact, the previous mail has also highlighted his control in terms on a macro level, a fact which you have admitted by stating that when Mr. Roslansky speaks, he speaks on behalf of the whole group of which LinkedIn India is a part.

Company's Response: *We apologize for any misunderstanding. We believe that a contention was raised that Mr. Roslansky exercises 'significant influence or control' on LinkedIn India in his capacity as the CEO of LinkedIn Corporation. Please note that, in the absence of cogent evidence suggesting otherwise, we had abided by the guidance given by the Supreme Court of India, in the case of Vodafone International Holdings B.V. v. Union of India, where the court provided that, "Legal relationship between a holding company and WOS is that they are two distinct legal persons and the holding company does not own the assets of the subsidiary and, in law, the management of the business of the subsidiary also vests in its Board of Directors [...] Holding company and subsidiary company are, however, considered as separate legal entities, and subsidiary are allowed decentralized management. Each subsidiary can reform its own management personnel and holding company may also provide expert, efficient and competent services for the benefit of the subsidiaries." The Court explicitly disregarded the mere presence of ownership, parental control, management etc. of a subsidiary as factors relevant for determining whether corporate veil should be pierced. Reference may also be drawn towards a judgement of the High Court of Delhi where the Court gave support to the contention that, **"it is not open to the holding company to dictate to the board of directors. The board of directors of a company must do all acts in the interest of the company, and its shareholders [...]"**, holding that, **"The directors of any company cannot and should not act as if they are puppets on a string, acting out a charade on the jerks and pulls of an invisible master puppeteer (the holding company) behind the curtain, behind a corporate veil."***

Mr. Roslansky is an employee of LinkedIn Corporation and with such position, at best, may act on such matters as may be authorized by the board of LinkedIn Corporation on matters requested by the board of LinkedIn India. The law relating to Significant Beneficial Owner(s), as captured under Section 90 of the Companies Act, 2013, does not stretch the concept of "control" and/or significant influence to include expert and competent services provided by one entity to another entity belonging to the same corporate group through an employee.

Further, exercise of significant influence/control or the right to exercise influence/control must necessarily flow from a source, typically either a statute or an agreement. Hence, Form Ben 2, to be filed to disclose the details and identity of a Significant Beneficial Owner under the Companies Act, 2013, provides for the attachment of agreement(s), instruments reflecting, inter alia, the presence of control or significant influence of the relevant party on the reporting company.

Reference may also be drawn to the statutory schemes in other countries. For example, the United Kingdom where the Statutory Guidance for determining "significant influence or control" as used under the (UK) Companies Act 2006

*provides that: (a) the right to exercise significant influence or control is a right which, if exercised, would give rise to the actual exercise of significant influence or control; and (b) in the context of a company, a person may hold a right to exercise significant influence or control as a result of a variety of circumstances including the provisions of a company's constitution, the rights attached to the shares or securities which a person holds, a shareholders' agreement, some other agreement or otherwise. The said guidance then goes on to explicitly include, "person is an employee acting in the course of their employment and nominee for their employer, including an employee, director or CEO of a third party (such as a corporate director company), which has significant influence or control over the company [...]" in the category of roles and relationships which **would not, on their own, result in that person being considered to be exercising significant influence or control in the relevant company.***

It may be noted that a similar interpretation has been taken under the Corporate Transparency Act of the United States.

*Further, please note that LinkedIn Group has consistently maintained that the ultimate beneficial ownership over the entities in the group vests solely with Microsoft Corporation. In this regard, please copy of the filing in respect of **beneficial ownership made by LinkedIn Belgium before the Treasury-Federal Public Service Finance.***

Please note that: (a) there is no agreement, instrument, or document of any kind between Mr. Roslansky and LinkedIn India that extends any right, power, or authority to Mr. Roslansky over the policies, procedures and/or practices of LinkedIn India, its operations or finance; (b) Mr. Roslansky is not and has never been a director of LinkedIn India and has never attended any of its meeting of the board; (c) Mr. Roslansky does not and has not held any shares in LinkedIn India; and (d) there are no corporate resolutions, charter documents or versions thereof which today or in the past authorized Mr. Roslansky to significantly influence and/or control the finance or operations of LinkedIn India. Thus, there exists no authority in Mr. Roslansky to either control and/or significantly influence the financial or operating policy decisions of LinkedIn India, which always vests and has vested with the board of directors of LinkedIn India.

Further, please note the text of Section 90 of the Companies Act, 2013 read with the relevant rules uses the term chief executive officer only in the limited context of a pooled investment vehicle and not of body corporates, which could have been added by the legislature. Even in this singular instance, such 'chief executive officer' has to be linked to a member of the reporting company and not the reporting company per se. Please note that Mr. Roslansky is not the chief executive officer of either of the two members of LinkedIn India. Mr. Roslansky is not authorized to participate in the financial or operational policy decisions of LinkedIn India.

Lastly, even the limited functions undertaken by Mr. Roslansky are subject to the review and oversight of the board of directors of LinkedIn Corporation and Microsoft Corporation.

While referring to the R&D contracts you have stated that these contracts have been duly approved by the Board of Directors. It is stated that these compliances have never been questioned by this office. However, it is important to note that during the hearing, this office was given to understand that the Indian entity is merely a back office whereas on perusal of the financial statements and the interviews given by Mr. Roslansky, it is seen that close to 700 employees have been employed in India in R&D operations, which would be critical to any tech company. You were specifically asked to point out as to whether Mr. Roslansky has any role in view of the R&D operations being done by the Indian entities on which you have simply stated that the contracts are executed by counter parties and their advisories. It is noted that execution of contract was not something that was referred to in this questionnaire and considering that transactions would have also taken place between LinkedIn Corporation US and LinkedIn India, where Mr. Roslansky is, in any case, one of the counter parties. As regards the issue that some of the contracts predate Mr. Roslansky's appointment, it was never stated by this office that Mr. Roslansky would be able to exercise any control or significant influence directly or indirectly prior to his appointment. You have also clearly specified regarding "direct control or significant influence," while clearly missing out that the provisions of Section 90 covers even the "right to exercise" which may not be direct.

Company's Response:

LinkedIn India has about 477 employees who are working in the R&D division. Various operating entities of LinkedIn and Microsoft enter into R&D contracts with various entities including LinkedIn India for provision of R&D services (as evidenced in the financials of LinkedIn India). As submitted earlier, depending on the requirements of LinkedIn or Microsoft team, the relevant function heads reach out to the relevant R&D teams in India (there are several verticals with the R&D division with its own team leader and reporting structures) for the relevant research and development programmes. LinkedIn India charges such entities (which are customers of LinkedIn India as against entities controlling the R&D teams) on an arm's length basis. Mr. Roslansky does not exercise any rights relating to the R&D division of LinkedIn India. He may as the CEO interact with his team in US for development of features or products who in turn outsource the work to LinkedIn India for development of such features or products as part of R&D activities while paying for such services, as evidenced in the financial statements of LinkedIn India.

Please note that there is no direct or indirect control and/or significant influence exercised by Mr. Roslansky in the financial and operating policy

decisions or operations of LinkedIn India including the R&D activities of LinkedIn India. As customary in tech companies, R&D activities involving IT operations are part of the back-office operations of LinkedIn Group as a multi-national organization. Thus, Mr. Roslansky directly or indirectly is not a counter party to the R&D services agreement and neither does he review or control the R&D operations of LinkedIn India.

Additionally, we are of the view that the 'right to exercise' has to be based on an authority of law or contract. In the present case, any right in favor of Mr. Roslansky over its affairs must be explicitly granted by the Company pursuant to an employment agreement with the company or authorization by the board. Merely being the CEO of LinkedIn Corporation does not grant Mr. Roslansky the 'right to exercise' control' or 'significant influence' over LinkedIn India as authorization with respect to operations of LinkedIn India has to be approved by its board or shareholders, in accordance with the Companies Act, 2013. This is evident from the authority that was granted to the International Finance Director to execute employment agreement. Thus, the right to exercise has to stem either by authorization or as per law.

We would also like to refer to Paragraph 7.1 of Report of the Company Law Committee, 2016 on the objective of identifying the beneficial owner, which states that it is important to identify the beneficial owner due to misuse of corporate vehicles for the purpose of evading tax or laundering money for corrupt or illegal purposes, including for terrorist activities has been a concern worldwide. Complex structures and chains of corporate vehicles are used to hide the real owner behind the transactions made using these structures. Realizing this, jurisdictions world over have been putting in place mechanisms to identify the natural person controlling a corporate entity.

By simply assuming that the CEO who is merely an employee of the body corporate is a significant beneficial owner would result in a dangerous precedent where promoters of body corporates would simply appoint a titular CEO and provide a declaration and thus successfully defeating the objective of identifying the significant beneficial owner, who as per us should be a natural person who has the authority to individually and independently take decisions beyond and over the supervision of the board or shareholders (if such person is not holding any shares).

Further, as stated in our previous replies and based on filings with the SEC, there are no such persons at the ultimate holding company level i.e. Microsoft Corporation.

We would humbly like to submit that Microsoft Corporation and its subsidiary LinkedIn Corporation are professionally run companies without any significant beneficial owners, which is a departure from the common corporate structures in India which are promoter led. However, there are a number of banking companies and IT companies in India (listed and otherwise) which are professionally run without any promoter or significant beneficial owner.

It is seen that payments were clearly been made by LinkedIn India on behalf of LinkedIn Corporation US and vice versa and the transactions included other entities in the group. It is questionable that such transactions, on behalf of other companies, can be carried out by the

directors of the Indian company alone without any apparent or latent external control or significant influence.

Company's Response: *We would like to clarify that all payments by LinkedIn India to the LinkedIn and Microsoft group entities are pursuant to valid agreements on arm's length basis and in accordance with the existing industry standards and practices.*

On perusal of Annexure 2 of your reply it is seen that the board meeting of the company held on 17.06.2011 in Mountain View, California, US had persons other than Board of Directors who were present. In the same meeting, it was decided that the authority to sign contracts of employment on behalf of the company was delegated to the International Finance Director (the "finance director") of LinkedIn Ireland Limited. In this regard you are required to provide all such instances where people other than directors have attended your board meetings from time to time and also specify in which capacity they have attended such meetings, including the meeting held on 17.06.2011.

Company's Response: *The company would like to confirm that since incorporation on December 31, 2009, up to September 17, 2012, the board of LinkedIn India had invited members of the global finance and legal team to attend the board meetings solely to observe the board meeting process of LinkedIn India and have an understanding of applicability of laws relating to such proceedings.*

Since September 17, 2012, no persons other than the directors have attended the board meetings of LinkedIn India. The minutes prior to September 17, 2012, notes Ms. Lora Blum (Vice President, Legal-Corporate & Assistant Secretary), Mr. Kent Buller (Chief Accounting Officer) and Ms. Lisa Laymon (Para legal and Senior Executive Administrator) as special invitees to the board meeting.

We would like to reiterate that Mr. Roslansky has never attended any board meeting of LinkedIn India and neither has any board member sought his consent relating to any of the agenda items approved by the board of LinkedIn India.

You are required to provide whether there is review of R&D operations besides the financial operations by the parent company of LinkedIn India including by an officer of the parent company. Thus, now you are

required to provide all the correspondences, minutes exchanged with regard to the review of the R&D operations and financial operations of LinkedIn India by its parent companies.

Company's Response: As stated above, no person reviews the R&D operations of LinkedIn India which are not consistent with the contracts executed by it with the counterparties which are availing the R&D services.

D2. Analysis of company's response

- I. Clearly, the company was not able to defend its stance that the employees of Microsoft appointed as directors in the subject company would not represent the interests of Microsoft. The example given by the company regarding the appointment of an executive director of a listed company as a non-executive director or independent director of another company which is not affiliated with the said listed company, is clearly not relevant in the present context as the companies in question here are connected to each other.
- II. Here for the first time, the company reported that Mr. Roslansky has entered into an employment agreement with LinkedIn Corporation and his role is subject to supervision of the board of the LinkedIn Corporation and its controlling shareholder i.e. Microsoft Corporation. Later when the company was asked to produce the copy of the employment agreement, the same was denied on the ground that the subject company lacked access to it and thereafter on the ground that it is confidential. This aspect will be covered in the later part of the order.
- III. The judgement of the Hon'ble Supreme Court in the Vodafone case cited by the company is in a different context. As far as the Companies Act, 2013 is concerned, it expressly recognizes the concepts of nominee directors and subsidiary companies whose Boards are in control of a holding company.
- IV. The reply of the subject company concedes that as an employee of the LinkedIn Corporation he may be authorized by the Board of LinkedIn Corporation to act on matters which are requested by the Board of the subject company. This is the only reference of direct interaction of Mr. Roslansky in

the affairs of the subject company. However, the company felt that this would not amount to control or significant influence.

- V. The company has relied on the Statutory Guidance for determining "significant influence or control" under the UK Companies Act, 2006 to state that a person who is an employee acting in the course of their employment and nominee for their employer, including an employee, director or CEO of a third party (such as a corporate director company) is not on its own regarded as a person exercising significant influence or control. They have also submitted that the position is same under the Corporate Transparency Act of the United States.
- VI. As far as the UK's law is concerned the position of not treating an employee as a SBO is not absolute as already stated by the company. However, as regards the position in US¹, the individual who is an important decision-maker, or an individual who has any other form of substantial control over the reporting company is to be reckoned for reporting as the beneficial owner of the reporting company. However, in US certain classes of companies are exempt from the reporting requirements.
- VII. The company has also argued that there is no written agreement to signify that there is any link between Mr. Roslansky and the subject company and further argued that the rules provide for reporting of a CEO in case of a Pooled Investment Vehicle and not in other cases. This argument is not true as the rules provide for different tests to identify the SBO, such as the test to identify it through indirect holdings *via* member of a reporting company, wherein the CEO in relation to a Pooled Investment Vehicle is to be identified, the other test is identify an individual on the basis of right to exercise or actual exercise of control or significant influence other than through direct holdings alone. Both these tests are independent of each other. Though it is possible for an overlap in certain cases.
- VIII. As far as the existence of a written agreement is concerned, there is no such requirement in law that a written agreement must pre-exist. The attending

¹ https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

circumstances backed with corroborating material would be suffice to show the existence of control or significant influence. In any case, it is sufficient to show that there exists the “right to exercise control or significant influence”.

- IX. The company has argued that the ‘right to exercise’ in the context of control or significant influence has to be based on an authority of law or contract and also if a CEO is regarded as a SBO then the companies would be tempted to appoint titular CEOs to find a get around.
- X. The reply of the company is not justified as there is no prior requirement in the law that the significant influence and control can only be exercised through a written contract or under a law. Further, the apprehension regarding appointment of titular CEOs is also unfounded as the choice of appointing a global CEO is not driven by the reporting requirements under the Indian law.
- XI. The company conceded to the participation of external members in the Board meetings of the company for a period of close to 3 years after the incorporation of the company in 2009 and also the fact that such individuals had the authority to take decisions on behalf of the company. It is noted that Ms. Lora Blum (Vice President, Legal Corporate & Assistant Secretary) had attended Board meetings during this period as an invitee and later went on to become a director of the subject company in 2014 for a period close to three years.

E1. Queries raised e-mail dated April 16, 2024 and its reply

The issues raised in the queries [in bold] and the reply of the company [italics] are as follows:

You have stated that LinkedIn India does not have insight about the considerations that are taken into account by Microsoft while deciding whether to reject an employee from serving as a director to an entity. On further examination, it is seen that the directors appointed in LinkedIn India are holding significant positions in LinkedIn Corporation as well as in Microsoft Corporation. The table below may be seen:

Directors in Indian Company	Position in LinkedIn Corporation as per the Annual Report	Position in Microsoft Corporation as per the Annual Report
KEITH RANGER DOLLIVER	VICE PRESIDENT AND DIRECTOR	ASSISTANT SECRETARY
BENJAMIN OWEN ORNDORFF	VICE PRESIDENT AND DIRECTOR	ASSISTANT SECRETARY
HENRY CHINING FONG	ASSISTANT SECRETARY	
MARK LEGASPI	ASSISTANT SECRETARY	

It is seen that while filing the e-form, these have been shown as Non-Promoter Director instead as “Promoter Director”. Further, non-reporting of these directors in India as nominees of the promoters is a significant lapse. These directors are exercising statutory roles under the laws/bylaws regulating LinkedIn Corporation and Microsoft Corporation. In addition, it appears that that LinkedIn India is unaware of the fact that two of its directors are also directors of LinkedIn Corporation. You are required to provide copies of MBP-1 submitted by these directors.

Company’s Response: *We had clarified in our previous response the manner in which directors were appointed. They have been invited by LinkedIn India board. As per Section 2(69) of the Companies Act, 2013, a “promoter” means a person: (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (c) in accordance with whose advice, directions or instructions the board of directors of the company is accustomed to act. Further, it is to be noted in the proviso of Section 2(69), that nothing in clause (c) shall apply to a person who is acting merely in a professional capacity.*

The above also supports our argument relating to professional CEOs such as Mr. Satya Nadella and Mr. Ryan, who don’t have shareholding or board control, not to be deemed as ‘significant beneficial owner’ as they are merely discharging their professional role under the supervision of the board of the companies where they merely are employees.

Based on the above provisions, we believe that no director fulfils any of the criteria to be termed as a “promoter” of LinkedIn India and to be accordingly designated as a “promoter director”.

Regarding the director(s) being designated as a nominee director, we would like to reiterate, that a mere right to reject the ability of an entity to its employee from becoming a director in another entity (whether related or not), would not

make such person the nominee of such entity. Microsoft exercises control over LinkedIn India as the ultimate holding company by virtue of shareholding of its subsidiaries, details of which has been provided in our previous responses.

The Board of Directors ("Board") of LinkedIn India thereafter invites individuals from within LinkedIn and Microsoft group of companies, with such specific financial or legal expertise to be appointed to the Board. As such, historically these directors have been shown as professional directors in the filings at the time of appointment.

Please see attached as Annexure-1, copies of Form MBP-1 submitted by the directors (as mentioned in the query above) disclosing their interests as of March 31, 2014.

While pursuing the filings of the company on MCA21 portal, it is seen that the company has filed minutes of 10th and 12th AGM wherein the AGM was not attended by any of the director.

Further, in the 12th AGM, Mr Henry Fong and Mr Mark Legaspi were appointed as Director (who are office holder in LinkedIn Corporation) wherein none of the then existing director were present. Thus, it seems that the agenda of the meeting is set up persons other than director.

Company's Response: *Regarding the 12th annual general meeting ("AGM") held on September 21, 2022, wherein Mr. Henry Fong and Mr. Mark Legaspi were appointed as Director(s), please note that while none of the directors attended the meeting, the agenda for the AGM was determined by the Board of LinkedIn India. In accordance with the Secretarial Standards-2 and the guidance note on Secretarial Standards-2 issued by the Institute of Company Secretaries of India, the absence of the directors and the reason thereof are noted by the chairperson as recorded in the minutes. Since the board meeting was conducted in India and the abovementioned directors were outside India, their respective leaves of absence were noted.*

We would like to reiterate that the agenda was framed by the board of directors.

In your reply, you have stated that Mr. Roslansky serves as an employee of LinkedIn Corporation pursuant to an employment agreement. Please provide a copy of the employment agreement entered into between LINKEDIN CORPORATION and Mr. RYAN ROSLANSKY.

It is also noted that Mr. RYAN ROSLANSKY is shown as a President and CEO in the annual report of LINKEDIN CORPORATION. Mr. RYAN ROSLANSKY is also reported separately as CEO, LinkedIn in the annual report of Microsoft Corporation.

Company's Response: *Please note that LinkedIn India does not exercise any control or influence over LinkedIn Corporation, Mr. Ryan Roslansky and/or*

any access to documents, instruments, or deeds privy to such person(s) as LinkedIn India lacks legal authority to seek such confidential documents. In the absence of any authority or right vested in us to procure such document(s), we respectfully submit that will not be able to obtain the same and share it with your kind office.

Further, while Mr. Roslansky's position and designation(s) in LinkedIn Corporation are a matter of public record, as conveyed by us in our reply dated April 9, 2024, Mr. Roslansky does not, either in his individual capacity or as a representative of LinkedIn Corporation acts as or can be termed as a significant beneficial owner of LinkedIn India.

Please refer to the note dated 20th July, 2020 shared by Mr. RYAN ROSLANSKY to all employees of the LinkedIn Group [https://news.linkedin.com/2020/july/a-message] wherein he has announced global layoffs which also covers the Asia Pacific region. The message of the CEO also lists out various steps which would be taken for employees of the LinkedIn Group who would be laid off. You may note that § 122(15) of the General Corporation Law of Delaware provides the following: powers to the Corporations:

Pay pensions and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any or all of its directors, officers and employees, and for any or all of the directors, officers and employees of its subsidiaries.

Clearly this provision also gives the "right to exercise" control to LINKEDIN CORPORATION over the management/policy decisions of the subject company. Please specify which individual exercises such control.

Company's Response: *Please note that we have already conveyed that Mr. Ryan Roslansky does not in any individual or independent form or manner participate in the operational or financial policy of LinkedIn India. Further, please note that since LinkedIn India is a private limited company incorporated in India, we cannot assume or relay any information, opinion, position, action, or omission, relating to law(s) of a foreign nation or the execution and/or implication of such law(s) on a foreign-incorporated entity. Similarly, we cannot assume expertise or authority to refer to or rely upon or interpret such legislations directly in legal proceedings emanating in India, relating to an Indian entity, from the (Indian) Companies Act, 2013. It is to be noted that the above referred provision is with respect to LinkedIn Corporation and does not empower individuals. We assume that LinkedIn Corporation, like any other body corporate, operates its business as per the directions of its board and/or its shareholders. Also, the above provision is limited only with respect to employee benefits and not with respect to all the management policies of its subsidiaries. Thus, a limited delegated authority over few select policies*

cannot be deemed to represent exercise of control over all the management/policy decisions of the subject company. Furthermore, such byelaws cannot override the provisions of the (Indian) Companies Act, 2013.

Please provide copies of the bylaws of LINKEDIN CORPORATION. Also state if any amendments were made during the last 4 years.

Company's Response: *Please note that LinkedIn India does not have any specific or special access to LinkedIn Corporation and/or documents relating to the said entity. LinkedIn Corporation is not our shareholder, and we don't have any information or access rights (contractual or otherwise) to its policies and/or internal documents of any nature, except such documents as maybe publicly available and accessible to the general public. Further, we don't have any visibility or access to the amendments made or proposed to be made to the bylaws of LinkedIn Corporation.*

You are required to refer to item no. 11 of the minutes of the Board meeting dated 02.5.2022, which refers to appointment of “managing signatories” for opening, operating, managing and closing bank accounts [at all locations] of the subject company. The resolution also provides for “operating signatories” and “bank guarantee signatories”. There is no limit on the amount of transaction that can be carried out if there are two signatories. Again, the resolution clarifies that the transactions would be binding on the company. The resolution also notes that it will not supersede or replace any resolution adopted by the Board of Microsoft Corporation related to the authorities of the CFO or Treasurer to bind the Board of Microsoft Corporation. It is important to note that almost all the signatories are Assistant Treasurers of Microsoft Corporation. Thus, it appears that the financial powers of the subject company are well and truly in the hands of the officers of Microsoft Corporation. It is noted that when this office had specifically asked for the names of the officers specifically empowered as per article 62 of your AoA, the names of the Assistant Treasurers of the Microsoft Corporation were not provided.

Similarly, item no. 13 of the minutes of the Board meeting dated 02.5.2022 gives special powers to Ms. Aditi Jha. Even her name was not

provided to this office as an officer appointed as per article 62 of the AoA.

Company's Response: Please note that: (a) such authorizations are delegation of administrative responsibilities to individuals associated with a company and are a feature of industry practice;

(b) Microsoft Corporation is the ultimate holding company of LinkedIn India, and accordingly, Microsoft Corporation will have the ability to operate the bank accounts of its subsidiaries/step-down subsidiaries as part of their corporate governance and fraud prevention practices. However, such ability is neither independent or individual-centric nor does it in any manner impact the overarching authority of the Board of LinkedIn India. In this respect, we draw your kind attention to paragraph 6 of the resolution(s) passed under item number 11 of the meeting of the Board dated May 2, 2022. The said portion of the relevant resolution(s) explicitly provides that the authorization granted under the said resolution(s) are valid only and until the same is not revoked or modified by a subsequent authorization of the LinkedIn India. Thus, the resolution inherently reserves a right and discretion of LinkedIn India to revoke, suspend or modify all authorizations relating to its banking operations as currently vested in identified individuals, irrespective of whether such individuals belong to Microsoft Corporation or otherwise. We would like to reiterate that a mere delegation of administrative function to operate bank accounts of the company does not result in the ability to participate in the financial and/or operational policy decisions of the company.

Further, in connection with your reference to Article 62 of the Articles of LinkedIn India, please note that the company, like any other corporate entity or governmental entity, relies upon and designates several of its employees, officers, and directors to perform day-to-day functions of the company. However, such designation does not translate into independent or individual 'control' or 'significant influence' over the relevant entity, whether governmental or non-governmental. Similarly, LinkedIn India has several employees performing their duties towards the company as assigned to them. As clarified in our response dated March 12, 2024, the Board has entrusted various day-to-day administrative and operational duties to different officers. However, all such designations and authorizations continue to operate under the overall power and authority of the Company expressed through its Board. We request you to confirm if each of the company's employees and/or officers performing any duty for the company is required to be disclosed for the purpose of queries relating to significant beneficial ownership of LinkedIn India as such disclosure may comprise of several hundred entries.

Please note that Aditi Jha is an employee of LinkedIn India who has been hired as, "Legal and Policy Director" of the Company. Her duties are that of a legal officer of LinkedIn India. Item number 13 of the minutes of the Board meeting dated May 2, 2022, does not provide any special power or authority to Aditi Jha. Infact, the said resolution extends to her authorizations commensurate with any legal officer of a company, to aid and assist her in performing her duties towards LinkedIn India. As an employee of LinkedIn India, she performs her duties absolutely within the overall control of the Board of LinkedIn India and remains answerable to the Board.

In light of the responses above, we continue to state and maintain that there is no individual who can be deemed to be a significant beneficial owner of LinkedIn India or deemed to exercise significant influence or control over the company. Further, as has been appreciated by your kind office, Microsoft Corporation is a listed company with a transparent practice relating to disclosure of its beneficial owners and corporate structure.

It is noted that Microsoft's CEO Mr. Satya Nadella is also the Chairman of the Board. The powers of the CEO of the Microsoft Corporation is provided under article 4.3 of the bylaws of Microsoft Corporation, which reads as under:

Authority and Duties of the Chief Executive Officer. The Chief Executive Officer shall have general charge and supervision of the business of the Corporation, shall see that all orders, actions and resolutions of the Board are carried out, and shall have such other authority and shall perform such other duties as set forth in these Bylaws or, to the extent consistent with the Bylaws, such other authorities and duties as prescribed by the Board.

It is noted that on account of the being the Chairman of Microsoft Corporation, Mr. Nadella also sets the agenda for the Board. Thus, in view of the financial control exercised by the officers of Microsoft Corporation, please state the reasons why Mr. Satya Nadella should not be regarded as the SBO of the subject company in addition to Mr. RYAN ROSLANSKY.

Company's Response: (a) *As communicated in our response dated April 9, 2024, Mr. Ryan Roslansky does not, in any form or manner, exercise any independent or individual control or influence which is outside the supervision of the board of directors of LinkedIn Corporation and Microsoft Corporation and cannot be regarded as a significant beneficial owner of LinkedIn India;* (b) *please note that as per the publicly available version of the bylaws of Microsoft Corporation, the Chief Executive Officer of Microsoft Corporation is bound to follow the orders given by the board of directors of the said entity. Thus, any person occupying such a post operates under the board of the said entity and remains answerable to it. The bylaws, inter alia, explicitly provide that any designation of duties by a Chief Executive Officer or other officers of Microsoft Corporation shall be subject to review by its board of directors.*

Therefore, neither Mr. Ryan Roslansky, nor Mr. Satya Nadella, in their individual or independent capacity respectively, can be regarded as a significant beneficial owner of LinkedIn India. They execute their responsibilities as professionals serving at the pleasure of their respective

board and shareholders. If their employment is terminated by the relevant employers, they will not be able to discharge their existing duties over the relevant companies which would clearly signify the lack of authority of such persons over LinkedIn India which is the cornerstone of determining significant beneficial ownership.

E2. Analysis of company's response

- I. The defense of the company in not treating the employees of Microsoft Corporation and LinkedIn Corporation as nominee directors in the subject company is unjustifiable. The details of this issue are dealt in later part of the order. Here it would suffice to say that by implication, the subject company has admitted that Microsoft can deny its employee from taking up an assignment in the subject company. This alone is sufficient to show that these directors have been appointed to safeguard the interest of Microsoft. As such, there is no harm in having a nominee director. However, it is crucial that these arrangements be disclosed to the registry.

- II. It was noted that at least on two occasions, i.e. on the 10th AGM and the 12th AGM important resolutions were passed including appointment of new directors in both the cases but none of the directors of the subject attended the AGM. The subject company in its reply has restricted itself to defending the 12th AGM, wherein they have stated that the agenda was framed by the Board of Directors in advance. However, the subject company has not commented about the procedures adopted during the 10th AGM, which was again not attended by any of the Board of Directors. While the subject company has defended its stance based on the Secretarial Standard 2 [SS-2], the said SS-2 states that the General Meeting shall be convened by or on the authority of the Board². The presence of Board of Directors in a general meeting is also relevant in the context of appointment of a Chairman for the meeting. Para 5.1 of SS-2 states as under:

The Chairman of the Board shall take the chair and conduct the Meeting. If the Chairman is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting. If no Director is present within fifteen Minutes

² Para 1.1 of SS-2

after the time appointed for holding the Meeting, or if no Director is willing to take the chair, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles.

- III. On an earlier occasion, the subject company had insisted that control or significant influence can only be proved through existence of a contract or through a statute, when they were asked to produced the copy of the employment agreement of Mr. Roslansky and the bylaws of LinkedIn Corporation, they did not produce the same on the ground that they had no access to the records of LinkedIn Corporation. This argument is a digression as the annual report³ of the LinkedIn Corporation clearly shows that it has two directors - Mr. Keith R. Dolliver and Mr. Benjamin O. Orndorff who are also directors of the subject company and part of the present proceedings, so the argument of lack of access on the part of the subject company is not justifiable.
- IV. The aspect of bank authorization given by the Board of the subject company in favour of the employees of Microsoft will be discussed in the later part of this order. On an earlier occasion, the company was required to provide a list of officers who have been appointed by the Board by virtue of article 61 and 62 of the AoA of the subject company.⁴ It is apparent that these articles are 'special' in nature as they have been specifically designed by the subject company and are at variance with the model articles at Table F of Schedule I of the Act. At that time, the subject company gave a list of only two officers, one of whom was a director. Later on, while going through the resolutions, it was noticed that other officers, including the officers of the Microsoft Corporation had the authorization of the Board of the subject company to create binding commitments on behalf of the subject company. When the issue of lack of disclosure was pointed out to the subject company, it gave an absurd reply asking for a confirmation as to whether it was required to disclose

³ https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=001687727&SEARCH_TYPE=1

⁴ The said articles read as under:

61. The Board may, from time to time, appoint such other officers, who may or may not be Directors of the Company, as it thinks fit.

62. The Board of the Company may from time to time authorize such Directors or officers of the Company as it may think appropriate to create binding commitments on behalf of the Company including for execution of all contracts, correspondence and agreements between the Company and any other entity.

each of the company's employees and/or officers performing any duty for the company. This was clearly a digression as this office had not sought details of all the employees, rather the query was specific to the roles assigned to any person by the Board, in view of the special nature of the articles of the subject company.

- V. The powers exercisable by the CEOs of Microsoft Corporation and LinkedIn Corporation is dealt in the later portion of this order. However, it is noteworthy that the subject company has restricted its argument by saying that the CEO of Microsoft Corporation is below the Board, without admitting that the said CEO is also the Chairman of the Board. The bylaws clearly provide that the CEO has the general charge and supervision of the business of the Corporation.

F. Directions issued for appearance of the resident director

- I. It was noted that the company did not co-operate in providing the bylaws of LinkedIn Corporation as well the employment agreement of Mr. Roslansky. It was ironical that the subject company had itself stated that the aspect of control is required to be proved through a document, but when the company was asked to produce the documents, it took a plea that it had no access to LinkedIn Corporation. This issue was noted along with discrepancies in the replies of the company and an email was sent on 29th April, 2024 asking for the personal appearance of Mr. Ashutosh Gupta [resident director] on 3rd May, 2024 for concluding the proceedings. It was explained to the subject company that the argument of lack of access is not justifiable as both the directors of LinkedIn Corporation were also directors of the subject company and part of the present proceedings. The subject company was given an option to provide a redacted copy of the agreement of Mr. Roslansky and provide only the extract dealing with his role, power and functions.
- II. Just one day before the scheduled date of hearing on 3rd May, 2024, the subject company wrote an email that stating that it was collecting the "third party" information and asked for deferring the hearing without indicating any date. The said request was rejected. However, at this, juncture the company

submitted that Mr. Ashutosh Gupta had resigned w.e.f. 30th April 2024 and all the documents that the company could submit have been submitted. Since the argument of lack of access claimed earlier by the company had been rejected, this time the company submitted that due to confidentiality, the two common directors were not in position to share the bye-laws of LinkedIn Corporation.

- III. The subject company was again informed that the presence of Mr. Ashutosh Gupta was crucial as he was the director during the relevant period of time and that there were inherent contradictions in the reply of the company which required his presence. It was also pointed out to them that the notice dated 29.04.2024 was received by Mr. Gupta and now his presence cannot be dispensed with. It was noted that Mr. Gupta's email id had been blocked and the emails sent subsequent to 30th April, 2024 were not getting delivered to him.
- IV. Despite clear communication that the presence of Mr. Gupta cannot be dispensed, as he was the sole resident director, the subject company continuously argued that the presence of Mr. Gupta be dispensed as he had resigned and that he did not have access to documents asked by this office.
- V. In view of the non-cooperation by the subject company at this juncture, the information submitted by the company and the records available in the public domain were examined to conclude this proceeding.

7. Analysis of the non-compliance of section 90 of the Act

A. Beneficial ownership through holding subsidiary relationship

- I. The term "holding company"⁵ is defined under the Act as under:

"holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;

Explanation.— For the purposes of this clause, the expression "company" includes any body corporate.

⁵ Section 2(46) of the Act

- II. The explanation to the definition, widens the ambit of the word “company” to cover entities which are bodies corporate. Thus, it includes the overseas corporations. The definition of subsidiary⁶ is as under:

“subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or*
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:*

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

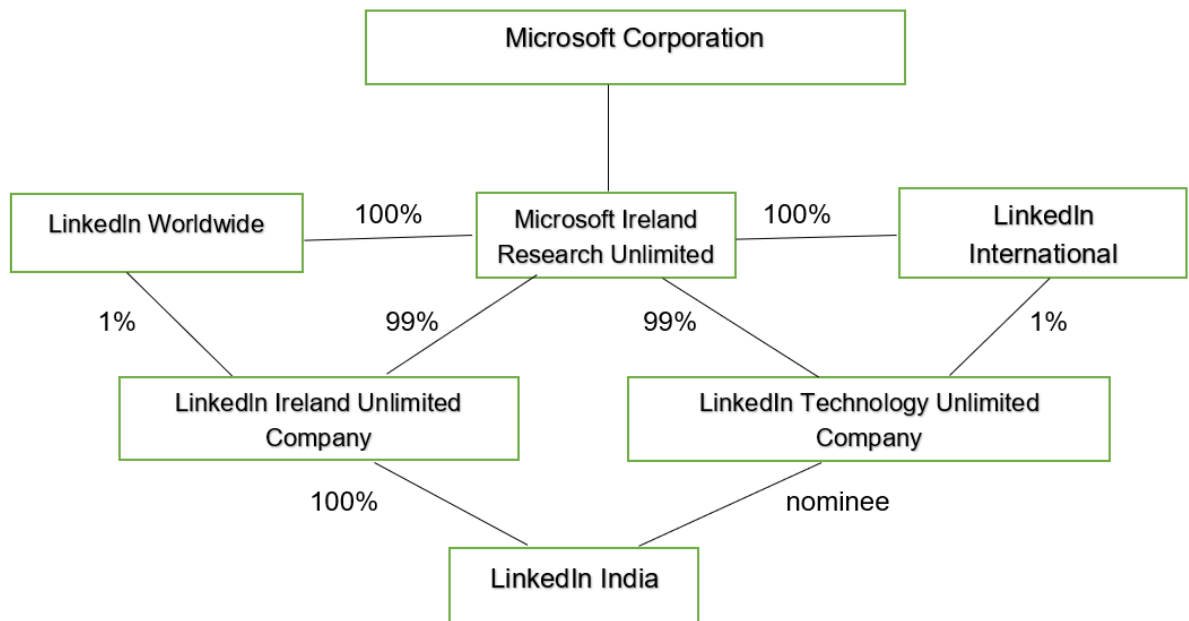
Explanation.—For the purposes of this clause,—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;*
- (b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;*
- (c) the expression “company” includes any body corporate;*
- (d) “layer” in relation to a holding company means its subsidiary or subsidiaries;*

- III. From the above definition it is evident that for a company to be regarded as a subsidiary, either its Board of Directors are controlled by the holding company, or more than one-half of its total voting power is controlled by the holding company through its own or together with one or more different subsidiaries of the holding company.

⁶ Section 2(87) of the Act

IV. The holding structure of the upstream entities of the company, as provided by it in its reply is once again reproduced below:



V. The company's holding structure does not indicate any holding by LinkedIn Corporation, USA either on its own or through one or more of its different subsidiaries. Now, we know that LinkedIn Corporation, USA has been till date consistently reported as the "holding company" of the subject company⁷ in the financial statements filed by the subject company. In such a situation, LinkedIn Corporation, USA could only be regarded as a holding company under section 2(87)(i) of the Act, i.e. on account of its ability to control the Board of Directors of the subject company. This ability to control the Board of Directors of the subject company has to be situated in LinkedIn Corporation itself and not in its holding company, i.e. Microsoft Corporation. It is emphasized that if LinkedIn Corporation did not have the ability to control the Board of Directors of the subject company, it ought to have been shown as a fellow subsidiary by the subject company and not as a holding company in its financial statements.

⁷ According to the financial statements filed by the subject company, prior to Microsoft's acquisition of LinkedIn, the LinkedIn Corporation was the ultimate holding company of the subject company till 07.12.2016.

VI. It may also be added that as regards the personal data of an individual using the LinkedIn platform is concerned, it is being controlled by LinkedIn Corporation for all countries other than designated countries⁸.

VII. The officers⁹ of LinkedIn Corporation as on 1st February, 2024 are as under:

Name of the Officer of LinkedIn Corporation	Title
BLAKE LAWIT	SECRETARY
RYAN ROSLANSKY	CEO
JAMES CHUONG	CFO
HENRY FONG	ASSISTANT SECRETARY
KEITH DOLLIVER	VICE PRESIDENT
BENJAMIN ORNDORFF	VICE PRESIDENT
RYAN ROSLANSKY	PRESIDENT
JAMES CHUONG	TREASURER
MARK LEGASPI	ASSISTANT SECRETARY
BENJAMIN ORNDORFF	DIRECTOR
KEITH DOLLIVER	DIRECTOR

VIII. The details of the present directors of the subject company as per the MCA records are as under:

Name	Designation	Date of Appointment
KEITH RANGER DOLLIVER	Director	21/03/2017
BENJAMIN OWEN ORNDORFF	Director	21/03/2017
ASHUTOSH GUPTA ¹⁰	Whole-time director	05/05/2020
HENRY CHINING FONG	Director	13/01/2022

⁸ The term "Designated Countries" refers to countries in the European Union (EU), European Economic Area (EEA), and Switzerland. Please refer https://www.linkedin.com/legal/user-agreement?src=li-other&veh=in.linkedin.com&trk=homepage-basic_footer-about

⁹ <https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSearchViewPDF.aspx>

¹⁰ The company states that Mr. Gupta is no longer a director but it is yet to file the relevant form to inform the registry.

- IX. It is clear that the Board of LinkedIn Corporation, US consists of two directors - Mr. Keith R. Dolliver and Mr. Benjamin O. Orndorff, who are also directors in the subject company. Now, it is impossible for a person or a group of persons to control themselves. Thus, by implication, the Board of LinkedIn Corporation does not control the Board of the subject company and the control has to be seen elsewhere.
- X. In such a situation, it is evident that the senior most officer of the LinkedIn Corporation is Mr. Ryan Roslansky who is the CEO and the President as per the records, whereas Mr. Keith R. Dolliver and Mr. Benjamin O. Orndorff have been shown as Vice-Presidents of LinkedIn Corporation, besides being shown as directors. The company has refused to share the bylaws of LinkedIn Corporation by giving different pretexts like it does not have access to it. Thereafter, when the company was apprised that two of the directors of LinkedIn Corporation are also directors of the subject company and thus the reason of access is unjustifiable, the subject company came up with the excuse that the bylaws are confidential. However, the bylaws of LinkedIn Corporation just after its acquisition by Microsoft are available in the public domain¹¹ on the website of U.S. Securities and Exchange Commission, which indicate that President is the highest officer of LinkedIn Corporation.
- XI. In any case, the website of the LinkedIn Corporation itself regards Mr. Ryan Roslansky as its leader¹². Thus, if LinkedIn Corporation is to be regarded as a holding company of the subject company [without any presence in the upstream layers], the same can only be due to the exercise of control on the composition of the Board of the subject company. Necessarily, LinkedIn Corporation has to exercise this control through some medium. It has been noted that the Board of LinkedIn Corporation cannot be the said medium as both the directors of LinkedIn Corporation are also directors of the subject company, and they cannot be said to control themselves. Due to all these reasons, it is seen that Mr. Ryan Roslansky is a significant beneficial owner

¹¹ https://www.sec.gov/Archives/edgar/data/1271024/000110465916161289/a16-22816_1ex3d2.htm

¹² https://about.linkedin.com/?trk=homepage-basic_footer-about

[SBO] of the subject company under section 90 of the Act on account of his ability to exercise control on the Board of Directors of the subject company, which is evident from the declaration of the subject company that LinkedIn Corporation is its holding company. It is also seen that LinkedIn in its own website has itself disclosed that Mr. Ryan Roslansky reports to Mr. Satya Nadella and is part of the Microsoft's senior leadership team¹³. This fact that Mr. Ryan Roslansky is part of Microsoft's senior leadership team is corroborated from the annual report of Microsoft Corporation¹⁴. Thus Mr. Satya Nadella is also a significant beneficial owner [SBO] of the subject company under section 90.

B. Beneficial ownership through the reporting channel test

- I. The current directors of the subject company as per the MCA records are as under:

Name	Designation	Date of Appointment
KEITH RANGER DOLLIVER	Director	21/03/2017
BENJAMIN OWEN ORNDORFF	Director	21/03/2017
ASHUTOSH GUPTA ¹⁵	Whole-time director	05/05/2020
HENRY CHINING FONG	Director	13/01/2022
ADITI JHA	Additional Director	25/04/2024

- II. While the subject company has consistently maintained that none of these directors can be regarded as the nominee of the promoter, it is imperative to understand the background of these directors so as to appreciate the circumstance of their appointment.
- III. Form 8K¹⁶ filed with the U.S. Securities and Exchange Commission shows that Microsoft Corporation had acquired LinkedIn Corporation by merging Liberty Merger Sub Inc. [wholly owned subsidiary of Microsoft Corporation] with and into the LinkedIn Corporation [transferee corporation]. The

¹³ <https://news.linkedin.com/2020/february/ryan-roslansky-to-become-ceo-june-1>

¹⁴ https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=000131308&SEARCH_TYPE=1

¹⁵ The company states that Mr. Gupta is no longer a director but it is yet to file the relevant form to inform the registry.

¹⁶ sec.gov/Archives/edgar/data/1271024/000110465916161289/a16-22816_18k.htm

transaction resulted in the payment of approximately \$26.4 billion in cash merger consideration. Upon completion of the Merger, Mr. Keith R. Dolliver and Mr. Benjamin O. Orndorff, who constituted the Board of Directors of Liberty Merger Sub Inc., became the directors of LinkedIn Corporation and all the previous directors of LinkedIn Corporation vacated their position as directors. Clearly, the appointment of Mr. Keith R. Dolliver and Mr. Benjamin O. Orndorff in LinkedIn Corporation, after its acquisition by Microsoft was at the behest of Microsoft¹⁷ and the argument of the company that Microsoft has no role in appointment of these individuals [who are also directors of LinkedIn Corporation since its acquisition by Microsoft] on the Board of the subject company is far from truth. It is also evident that Mr. Keith R. Dolliver and Mr. Benjamin O. Orndorff were appointed as directors in the subject company consequent to the acquisition of LinkedIn Corporation by Microsoft. The subject company has provided the copies of the Form MBP-1, which shows that Mr. Keith R. Dolliver is a director in a total of 367 companies in different countries of the world, most of which are entities of Microsoft and LinkedIn, as their names suggest. Similarly, Mr. Benjamin O. Orndorff is a director in a total of 461 companies in different countries of the world, most of which are entities of Microsoft and LinkedIn, as their names suggest. Most, noticeably, both Mr. Keith R. Dolliver and Mr. Benjamin O. Orndorff are also directors in LinkedIn Ireland Unlimited Company and Microsoft Ireland Research Unlimited Company which are both upstream entities of the subject company below Microsoft Corporation.

IV. The position of Mr. Keith R. Dolliver and Mr. Benjamin O. Orndorff as per the annual report of LinkedIn Corporation and Microsoft Corporation is as under:

Directors in Indian Company	Position in LinkedIn Corporation as per the Annual Report¹⁸	Position in Microsoft Corporation as per the Annual Report¹⁹
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¹⁷ In case of acquisition of Greenfield by Microsoft in a similar fashion through a merger subsidiary, Mr. Keith R. Dolliver and Mr. Benjamin O. Orndorff were appointed as directors of Greenfield by Microsoft pursuant to the Merger Agreement, and their appointment provided Microsoft with majority representation on the Greenfield board of directors - <https://www.sec.gov/Archives/edgar/data/789019/000119312508211640/dsc13d.htm> [SEC filings]. Similarly, in Microsoft's acquisition of Activision Blizzard, Inc., Mr. Keith R. Dolliver and Mr. Benjamin O. Orndorff again became directors in Activision Blizzard, Inc. - <https://investor.activision.com/node/36296/html> [SEC filings]

¹⁸ https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=001687727&SEARCH_TYPE=1

¹⁹ https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=000131308&SEARCH_TYPE=1

KEITH RANGER DOLLIVER	VICE PRESIDENT AND DIRECTOR	SECRETARY
BENJAMIN OWEN ORNORFF	VICE PRESIDENT AND DIRECTOR	ASSISTANT SECRETARY

- V. Both Mr. Keith R. Dolliver and Mr. Benjamin O. Orndorff describe their occupation as attorney in the Form DIR-2 [consent to act as a director] attached with Form DIR-12. Mr. Brad Smith, Vice Chair and President of Microsoft Corporation heads the legal team of Microsoft Corporation²⁰. As President Mr. Smith reports to Mr. Satya Nadella who is the Chairman and CEO.
- VI. Now, Mr. Henry Fong who is a director of the subject company is an Assistant Secretary in LinkedIn Corporation, as per its annual report. The Form MBP-1 provided by the subject company shows that he is a director in 23 other LinkedIn entities [as the names suggest] in different countries of the world. Importantly, he is a director in all the LinkedIn upstream entities of the subject company, i.e. LinkedIn Ireland Unlimited Company, LinkedIn Worldwide, LinkedIn Technology Unlimited Company and LinkedIn International. During the ongoing proceedings, Mr. Mark Leonard Nades Legaspi has resigned as a director of the subject company. He too has been reported as Assistant Secretary in the annual report of LinkedIn Corporation. Prior to the appointment of Mr. Henry Fong and Mr. Mark Leonard Nades Legaspi as directors in the subject company in 2022, Ms. Michelle Leung was the director of the subject company from 2017 to 2021. Incidentally, Ms. Michelle Leung was also an Assistant Secretary in LinkedIn Corporation till 2021. Thus, the tenure of Ms. Michelle Leung as a director of the subject company was certainly linked to her employment in the subject company. Prior to her, Ms. Lora Blum who was as Assistant Secretary in LinkedIn Corporation [as stated by the subject company in its reply] and she served as a director in the subject company from 2014 – 2017. This brings us to one of the first directors of the subject company, Ms. Erika Rottenberg, who served the subject company from 2009 to 2014 and she was also the Vice President, General Counsel &

²⁰ <https://news.microsoft.com/exec/brad-smith/>

Corporate Secretary at LinkedIn Corporation and reported to then CEO of LinkedIn Corporation²¹.

- VII. The present director of the subject company Mr. Henry Fong reports to Mr. Blake Lawit, who is the Secretary of LinkedIn Corporation [as per the annual report] and also its Senior Vice President and General Counsel.²² Mr. Blake Lawit reports to Mr. Ryan Roslansky who is the President and CEO of LinkedIn Corporation.
- VIII. It is also imperative to have a look at the regional dynamics in appointment of directors. The Asia Pacific headquarters of LinkedIn is in Singapore. Mr. Arvind Rajan, one of the first directors of the subject company served from 2009 to 2010. The LinkedIn's own pressroom release says that he was also the Managing Director and Vice-President, Asia Pacific and Japan²³. Mr. Ashutosh Gupta, who has served as a whole-time director of the subject company since 2020, describes himself as a country manager of LinkedIn India and Senior Director – Head of APAC OS1 in the signer of his emails to this office. The news articles in the public domain suggest that Mr. Gupta as country manager of India was supposed to report to Mr. Olivier Legrand, Managing Director for the Asia Pacific region.²⁴ As noted above, Mr. Ashutosh Gupta made himself unavailable for the hearing and the company blocked his email id saying that he has been relieved. Thus, this crucial information could not get corroborated. However, the resources in the public domain, including the LinkedIn Pressroom indicate that the subject company is governed as part of the APAC region, which is head quartered in Singapore.
- IX. Another thing to be noted from the financial statements of the subject company is that the employees of Microsoft and LinkedIn who have served on the Board of the subject company have not taken any remuneration from the subject company. Thus, the submissions of the subject company about its own role in

²¹ <https://www.sec.gov/Archives/edgar/data/1271024/000119312511016022/dex108.htm>

²² Reference: SEC Filings 10th February, 2020 - <https://www.sec.gov/comments/s7-21-19/s72119.htm>

²³ <https://news.linkedin.com/2011/05/linkedin-opens-asia-pacific-regional-headquarters-in-singapore>

²⁴ <https://yourstory.com/2019/07/ashutosh-gupta-linkedin-india-country-manager>. An article in the LinkedIn Pressroom discusses the views of Olivier Legrand, Managing Director, LinkedIn Asia Pacific and Japan on the growth of LinkedIn platform in Asia Pacific - <https://news.linkedin.com/2016/more-than-100M-professionals-APAC-connected-on-LinkedIn>.

inviting applications from the employees of Microsoft and LinkedIn to act as a director in the subject company lacks credibility. Clearly, the same employees/officers of Microsoft Corporation and LinkedIn Corporation are getting appointed as directors in subsidiaries across the world. These appointments ought to have been made under section 161(3) of the Act and duly disclosed to the registry at the time of filing form DIR-12 [which contains a specific field in this regard].

- X. Clearly, the argument of the subject company that the employees of Microsoft Corporation and LinkedIn Corporation be not considered as their nominees belies all logic. From the above, it can be seen that the appointments have a clear pattern, the said directors do not take any remuneration from the subject company, these directors resign from the subject company once they exit from the parent entity, and that these individuals are also associated with other group entities of the Microsoft and LinkedIn across several countries. There can be no doubt that they represent the interests of Microsoft Corporation and thus nominees.
- XI. Now in order to understand the leadership role of Mr. Satya Nadella in Microsoft Corporation, it is important to understand the bylaws of Microsoft Corporation²⁵. The relevant sections of the bylaws which lay down the authority and duties of the CEO and other officers are as under:

4.3 Authority and Duties of the Chief Executive Officer. *The Chief Executive Officer shall have general charge and supervision of the business of the Corporation, shall see that all orders, actions and resolutions of the Board are carried out, and shall have such other authority and shall perform such other duties as set forth in these Bylaws or, to the extent consistent with the Bylaws, such other authorities and duties as prescribed by the Board.*

4.4 Authority and Duties of Other Officers. *Each officer other than the Chief Executive Officer shall have the authority and shall perform the duties set forth in these Bylaws or, to the extent consistent with the Bylaws, the duties prescribed by the Board, by the Chief Executive Officer, or by an officer authorized by the Board to prescribe the duties of such officer. Any designation of duties by the Chief Executive Officer*

²⁵ <https://view.officeapps.live.com/op/view.aspx?src=https://c.s-microsoft.com/en-us/CMSFiles/Bylaws%20of%20Microsoft%20Corporation.docx?version=f835dfa9-6c59-3a10-d4be-b60ab5e4a8cd>

or other officer shall be subject to review by the Board but shall be in full force and effect in the absence of such review.

XII. It is clear that the CEO of Microsoft Corporation has general charge and supervision of business. Like the Board of Directors, the CEO on his own can also prescribe duties to other officers of Microsoft. The designation of duties by the CEO to other officers will remain in full force unless it is reviewed and varied. In addition, Mr. Satya Nadella is also the Chairman of Microsoft Corporation. Thus, the argument of the subject company regarding supervision of the Board does not hide the fact that Mr. Satya Nadella is in charge of the business of Microsoft Corporation and that his decisions will hold the sway unless they are varied by the Board of which he is the Chairman. In fact, the bylaws clearly provide that when the CEO orders the designation of duties to other officers, such order prevails until and unless it is reviewed. The relevant sections of the bylaws which lay down the authority and duties of the Chairman are as under:

1.12 Order of Business. *The Chair of a meeting of shareholders, determined in accordance with Section 1.11, shall have discretion to establish the order of business for the meeting subject to any specific order established by the Board. In the event that a nomination or submission of other business is not made in accordance with the procedures specified in these Bylaws (or any applicable rule or regulation referred to herein), the Chair of the meeting has the authority to determine and declare to the meeting that it is invalid. If the Chair of the meeting declares it invalid, the nomination or submission will be disregarded.*

1.13 Notice of Shareholder Business to be Conducted at an Annual Meeting of Shareholders.

(e) Only those persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible to serve as directors. Only such business shall be conducted at a meeting of shareholders as shall have been brought at the meeting in accordance with the procedures set forth in these Bylaws. Except as otherwise provided by law, the Articles of Incorporation, or these Bylaws, the Chair of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought at the meeting was made or proposed, as the case may be, in compliance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such proposal or nomination shall be disregarded.

XIII. Clearly, the Chair has the power to take decisions on the order of business and to interpret the bylaws to decide the fate of a nomination or the conduct of a business.

XIV. In any case, in the instant case, the issue is not to compare the position of CEO with the Board of Directors, but to only point out the general supervision of Microsoft Corporation is with its CEO. It is clear that the majority of the directors of the subject company are employees of LinkedIn Corporation or Microsoft Corporation whose reporting channel would end up to Mr. Ryan Roslansky or Mr. Satya Nadella. The extant rules cover the scenario of “right to exercise” of significant influence or control in any means other than through direct holdings alone. Actual exercise of control or significant influence is not required to be proved. Through the layers of reporting channels discussed above, the “right to exercise” of control of the majority of the directors of the subject company by Mr. Ryan Roslansky or Mr. Satya Nadella has been affirmed.

C. Beneficial ownership through the test of financial control

I. In a Board meeting of the subject company held in Singapore on 30th November, 2016, *inter alia*, the following resolution was passed by the Board of the subject company:

RESOLVED FURTHER that the Board of Directors hereby authorize, subject to such resolution becoming effective only from the fourth day of the date of merger between LinkedIn Corporation with Liberty Merger Sub Inc, a subsidiary of Microsoft Corporation, that any two of the following individuals to jointly take any and all action necessary to establish new bank accounts, operate or close existing bank accounts, as are needed for the Company, and to further designate, authorize and revoke any designation of authorized signatories, including executing, in the name of this Board, any "banking resolutions" and agreements required by a bank in connection with the opening, operating and closing of such an account. Any one of the following individuals is

authorized to sign agreements for banking services and is authorized to close such accounts, provided, however, that when designating authorized signers there shall be required two authorized signers for amounts of US\$10,000 (or the equivalent amount in Indian rupee) or more:

Authorized individuals:

(a) Chief Financial Officer, Microsoft Corporation

(b) Treasurer, Microsoft Corporation

(c) Assistant Treasurer, Microsoft Corporation

- II. In a Board meeting of the subject company held in Singapore on 2nd May, 2022, *inter alia*, the subject company modified the earlier resolutions to provide for appointment of managing signatories²⁶, operating signatories²⁷ and bank guarantee signatories²⁸. Interestingly, the resolution provides the following clarification:

That, for the avoidance of doubt, this resolution does not supersede or replace any prior resolution adopted by the Board of Directors of Microsoft Corporation related to the authorities of the Chief Financial Officer or Treasurer of Microsoft Corporation to bind Microsoft Corporation which shall remain in full force and effect.

- III. This clearly shows the amount of financial control being exercised by Microsoft Corporation. It is evident from the financial statements of the subject company that the related party transactions are being carried out by the subject company on behalf of some other group entities and *vice versa*. This financial control by the Microsoft Corporation appears to be a plausible reason for such

²⁶ The Managing Signatories hold the primary rights to open, operate, manage, and close the Accounts. 6 Assistant Treasurers of Microsoft Corporation have been named as Managing Signatories.

²⁷ The Operating Signatories are only permitted to sign checks, drafts, or other orders for the payment of money on the Accounts, within the limitations specified, if any, in USD (or the equivalent in local currency). For two Operating Signatories acting jointly, there is no limit on the value of the transaction. 3 Assistant Secretaries of Microsoft Corporation, 1 Director of Accounting Operation and APAC Controller and 1 Senior Financial Accountant of the subject company have been named as Operating Signatories

²⁸ Bank Guarantee Signatories in general, to represent the Company in internal and foreign trade operations, including bank guarantees, with limited authorizations in representation, whether singly or jointly, with any other Bank Guarantee Signatory, within the limitations specified in UND (or the equivalent in local currency) on a single transaction. For two Bank Guarantee Signatories acting jointly, there is no limit on the value of the transaction. 3 Assistant Secretaries of Microsoft Corporation, 1 Vice President – Controller of LinkedIn Corporation have been named as Bank Guarantee Signatories.

transactions. The Microsoft Treasury maintains control over thousands of bank accounts across different entities²⁹. While the argument of the subject company that this may be a tool of fraud prevention may be true, the other argument of the subject company that this arrangement does not undermine the overarching authority of the Board of the subject company is not so accurate, as the resolution itself makes it subservient to the decisions taken by the Board of Microsoft Corporation or its officers. In any case, the employees of Microsoft Corporation who have been made signatories are not answerable to the Board of the subject company.

- IV. It is clarified that this order does not as such intend to comment on the merits of this arrangement. The only intent is to discern the extent of pervasive control being exercised through this arrangement.
- V. Again, under the rules all that is required to be established is the “right to exercise” of significant influence or control in any means other than through direct holdings alone. Given that primarily the control over the financial transactions of the subject company vests with the employees of the Microsoft Corporation, who are subject to the supervision of its CEO, the position of Mr. Satya Nadella gives him the “right to exercise control” in relation to the subject company.

8. The relevant provision of Section 89- Declaration in respect of beneficial interest in any share:

(1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.

(2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

²⁹ <https://powerbi.microsoft.com/fr-ca/blog/how-microsoft-treasury-uses-power-bi/>

(3) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed

(5) If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

(6) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed.

(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default.

9. The relevant provision of Section 90 - Register of significant beneficial owners in a company are as follows:

(1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

(2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which shall include the

name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

(4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

(4A) Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.

(5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe--

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,

and who is not registered as a significant beneficial owner with the company as required under this section.

(10) If any person fails to make a declaration as required under sub-section (1), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.]

(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees.

(12) If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.

10. Section 450 (Punishment where no specific penalty or punishment is provided)

“If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention Continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.”

11. The relevant provision Companies (Significant Beneficial Owners) Rules, 2018:

2(1)(b) “control” means control as defined in clause (27) of section 2 of the Act.

2(1)(h) “significant beneficial owner” in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-

(i) holds indirectly, or together with any direct holdings, not less than ten per cent of the shares;

(ii) holds indirectly, or together with any direct holdings, not less than ten percent of the voting rights in the shares;

(iii) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;

(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone:

Explanation III. – For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if

he satisfies any of the following criteria, in respect of a member of the reporting company, namely:-

- (v) where the member of the reporting company is,-
 - (a) a pooled investment vehicle; or
 - (b) an entity controlled by the pooled investment vehicle, based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle,-
 - (A) is a general partner; or
 - (B) is an investment manager; or
 - (C) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

Rule 2A Duty of the reporting company.

(2) Without prejudice to the generality of the steps stated in sub-rule (1), every reporting company shall in all cases where its member (other than an individual), holds not less than ten per cent. of its;-

- (a) shares, or
 - (b) voting rights, or
 - (c) right to receive or participate in the dividend or any other distribution payable in a financial year,
- give notice to such member, seeking information in accordance with sub-section (5) of section 90, in Form No. BEN-4.

12. Adjudication of penalty: -

- i. For the aforesaid reasons, both the registered owner, i.e. LINKEDIN TECHNOLOGY UNLIMITED COMPANY and the beneficial owner, i.e. LINKEDIN IRELAND UNLIMITED COMPANY have not given their declarations as required under sub-section (1) or sub-section (2) of section 89 and are liable for a penalty as provided under section 89(5) of the Act. The date of default is being reckoned subsequent to the period of decriminalization

of the provision w.e.f. 21.12.2020 and upto the date of issue of SCN on 15.02.2024.

- ii. For the aforesaid reasons, Mr. Satya Nadella and Mr. Ryan Roslansky are the SBOs in relation to the subject company and are liable to a penalty under section 90(10) of the Act, due to their failure to report as per section 90(1). Mr. Ryan Roslansky was appointed as the global CEO of LinkedIn Corporation on 1st June 2020 and started reporting to Mr. Satya Nadella. Thus, the period is being reckoned 30 days after his appointment i.e. w.e.f 01.07.2020 onwards till the issuance of the SCN under section 90, which was issued on 15.02.2024.
- iii. The subject company and its officers are liable for action under section 90 (11) of the Act for its failure to take necessary steps as per section 90(4A) to identify the SBO in relation to the company. Also, the company and its officers failed to even send a notice [which was mandatorily required to be sent] as per rule 2A (2) of the Companies (Significant Beneficial Owners) Rules, 2018 leading to a contravention of section 90(5) for which penalty has been provided under section 450. All the officers, including the non-executive directors are liable for this violation due to the presumption of clear knowledge on part of each of such directors about the holding structure of the company. The period is being reckoned from 01.07.2020 onwards till the issuance of the SCN under section 90, which was issued on 15.02.2024.
- iv. Now in exercise of the powers conferred vide Notification dated 24th March, 2015, and having considered the reply submitted and hearings held in the matter, I do hereby impose the penalty as follows:

Table- I

Calculation of penalty for violation of Section 89				
Violation section & period	Period of default in days	Penalty imposed on	Calculation of penalty amount (in Rs.)	Penalty imposed as per Section 89(5) (in Rs.)
A	B	C	D	E
Section 89(1) of the Act	21.12.2020 to 15.02.2024 i.e 1152 days	LINKEDIN TECHNOLOGY UNLIMITED COMPANY (Registered Owner of 1 share)	50000 + 1151 x 200 [2,30,400] = 2,80,400 subject to maximum 5,00,000	2,80,400
Section 89(2) of the Act	21.12.2020 to 15.02.2024 i.e 1152 days	LINKEDIN IRELAND UNLIMITED COMPANY (Beneficial Owner of 1 share)	50000 + 1151 x 200 [2,30,400] = 2,80,400 subject to maximum 5,00,000	2,80,400

Table- II

Calculation of penalty for violation of Section 90				
Violation section and penal provision	Period of default (in days)	Penalty imposed on	Calculation of penalty amount (in Rs.)	Penalty imposed as per Section 90 (10)/ 90(11)/ 450 (in Rs.)
A	B	C	D	E
Section 90 (1) of the Act penal provision 90(10) of the Act.	01.07.2020 to 15.02.2024 i.e. 1325 days	Mr. Satya Nadella (Significant Beneficial Owner)	50000 + 1324 x 1000 [13,24,000] = 13,74,000 Subject to maximum 2,00,000	2,00,000
		Mr. Ryan Roslansky (Significant Beneficial Owner)	50000 + 1324 x 1000 [13,24,000] = 13,74,000 Subject to maximum 2,00,000	2,00,000

Calculation of penalty for violation of Section 90				
Violation section and penal provision	Period of default (in days)	Penalty imposed on	Calculation of penalty amount (in Rs.)	Penalty imposed as per Section 90 (10)/ 90(11)/ 450 (in Rs.)
A	B	C	D	E
Section 90 (4A) of the Act, penal provision 90 (11) of the Act.	01.07.2020 to 15.02.2024 i.e. 1325 days	LINKEDIN TECHNOLOGY INFORMATION PRIVATE LIMITED (company)	1,00,000 + 1324 x 500 [6,62,000] = 7,62,000 Subject to maximum 5,00,000	5,00,000
	01.07.2020 to 15.02.2024 i.e. 1325 days	KEITH RANGER DOLLIVER (Director)	25,000 + 1324 x 200 [2,64,800] = 2,89,800 Subject to maximum 1,00,000	1,00,000
	01.07.2020 to 15.02.2024 i.e. 1325 days	BENJAMIN OWEN ORNDORFF (Director)	25,000 + 1324 x 200 [2,64,800] = 2,89,800 Subject to maximum 1,00,000	1,00,000
	01.07.2020 to 10.09.2021 i.e. 437 days	MICHELLE KATY LEUNG (Director)	25,000 + 436 x 200 [87,200] = 1,12,200 Subject to maximum 1,00,000	1,00,000
	01.07.2020 to 18.02.2022 i.e. 598 days	LISA EMIKO SATO	25,000 + 597 x 200 [1,19,400] = 1,44,400 Subject to maximum 1,00,000	1,00,000
	01.07.2020 to 15.02.2024 i.e. 1325 days	ASHUTOSH GUPTA (Whole Time Director)	25,000 + 1324 x 200 [2,64,800] = 2,89,800 Subject to maximum 1,00,000	1,00,000
	02.05.2022 to 15.02.2024 i.e. 655 days	MARK LEONARD NADRES LEGASPI (Director)	25,000 + 654 x 200 [1,30,800] = 1,55,800 Subject to maximum 1,00,000	1,00,000

Calculation of penalty for violation of Section 90				
Violation section and penal provision	Period of default (in days)	Penalty imposed on	Calculation of penalty amount (in Rs.)	Penalty imposed as per Section 90 (10)/ 90(11)/ 450 (in Rs.)
A	B	C	D	E
	13.01.2022 to 15.02.2024 i.e. 764 days	HENRY CHINING FONG (Director)	25,000 + 763 x 200 [1,52,600] = 1,77,600 Subject to maximum 1,00,000	1,00,000
Section 90 (5) of the Act, penal provision Section 450 of the Act.	01.07.2020 to 15.02.2024 i.e. 1325 days	LINKEDIN TECHNOLOGY INFORMATION PRIVATE LIMITED (company)	10,000 + 1324 x 1000 [13,24,000] = 13,34,000 Subject to maximum 2,00,000	2,00,000
	01.07.2020 to 15.02.2024 i.e. 1325 days	KEITH RANGER DOLLIVER (Director)	10,000 + 1324 x 1000 [13,24,000] = 13,34,000 Subject to maximum 50,000	50,000
	01.07.2020 to 15.02.2024 i.e. 1325 days	BENJAMIN OWEN ORNDORFF (Director)	10,000 + 1324 x 1000 [13,24,000] = 13,34,000 Subject to maximum 50,000	50,000
	01.07.2020 to 10.09.2021 i.e. 437 days	MICHELLE KATY LEUNG (Director)	10,000 + 436x 1000 [4,36,000] = 4,46,000 Subject to maximum 50,000	50,000
	01.07.2020 to 18.02.2022 i.e. 598 days	LISA EMIKO SATO	10,000 + 597x 1000 [5,97,000] = 6,07,000 Subject to maximum 50,000	50,000
	01.07.2020 to 15.02.2024 i.e. 1325 days	ASHUTOSH GUPTA (Whole Time Director)	10,000 + 1324x 1000 [13,24,000] = 13,34,000 Subject to maximum 50,000	50,000

Calculation of penalty for violation of Section 90				
Violation section and penal provision	Period of default (in days)	Penalty imposed on	Calculation of penalty amount (in Rs.)	Penalty imposed as per Section 90 (10)/ 90(11)/ 450 (in Rs.)
A	B	C	D	E
	02.05.2022 to 15.02.2024 i.e. 655 days	MARK LEONARD NADRES LEGASPI (Director)	10,000 + 654 x 1000 [6,54,000] = 6,64,000 Subject to maximum 50,000	50,000
	13.01.2022 to 15.02.2024 i.e. 764 days	HENRY CHINING FONG (Director)	10,000 + 763 x 1000 [7,63,000] = 7,73,000 Subject to maximum 50,000	50,000

- a. Names of parties as mentioned in Table I and Table II above are hereby directed to pay the penalty amount as per column no. 'E' therein.
- b. The subject company namely LINKEDIN TECHNOLOGY INFORMATION PRIVATE LIMITED is required to ensure that the payment of the penalty amount be paid by all persons mentioned above.
- c. The said amount of penalty shall be paid through online by using the website www.mca.gov.in (Misc. head) in favor of "Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi, **within 90 days of receipt of this order, and intimate this office with proof of penalty paid.**
- d. Pursuant to section 454(3)(b) of the Act, company, its officers are required to file e-form MGT-6 and BEN-2 within a period of 60 days from the date of this order, after following the due process.
- e. Appeal against this order may be filed with the Regional Director (NR), Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003 within a period of **sixty days** from the date of receipt of this order, in Form ADJ [available on Ministry website www.mca.gov.in] setting forth the grounds of appeal and shall be accompanied by a certified copy of the order. [Section 454(5) & 454(6) of the Act read with Companies (Adjudicating of Penalties) Rules, 2014].

- f. Your attention is also invited to section 454(8) of the Act in the event of non-compliance of this order.

(Pranay Chaturvedi, ICLS)
Registrar of Companies
NCT of Delhi & Haryana

No. ROC/D/Adj/Order/Section 89&90/2246- 2256

Date: 22.05.2024

To

1. LINKEDIN TECHNOLOGY INFORMATION PRIVATE LIMITED
16A/20, WEA MAIN AJMAL KHAN ROAD, KAROL BAGH, NEW DELHI ,
Delhi , 110005, India
sks2@linkedin.com
2. Mr. Satya Nadella
C/o LINKEDIN TECHNOLOGY INFORMATION PRIVATE LIMITED
16A/20, WEA MAIN AJMAL KHAN ROAD, KAROL BAGH, NEW DELHI ,
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sks2@linkedin.com
3. Mr. Ryan Roslansky
C/o LINKEDIN TECHNOLOGY INFORMATION PRIVATE LIMITED
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4. MICHELLE KATY LEUNG
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5. LISA EMIKO SATO
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6. KEITH RANGER DOLLIVER
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10. HENRY CHINING FONG
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