CAN ONE PERSON SIMULTANEOUSLY HOLD TWO KEY MANAGERIAL PERSONNEL (KMP) OFFICES IN INDIA?

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Background

On June 29, 2026, the Registrar of Companies, Gwalior ("**ROC**"), in the matter of EKI Energy Services Limited ("**EESL**"/ "**Company**"), adjudicated that an individual cannot simultaneously hold the office of whole-time director ("**WTD**") and chief financial officer ("**CFO**"). In this article, we analyze the ROC's findings, its legal reasoning, and the broader governance implications for Indian companies.

Section 203 of the Companies Act, 2013 (the "**Act**") requires every listed company and every public company with a paid-up share capital of INR100,000,000 (Indian Rupees One Hundred Million) (or approximately US$1,043,000 (US Dollars One Million Forty-three Thousand)) or more to appoint whole-time key managerial personnel ("**KMPs**"). The KMPs to be appointed by the above class of companies under Section 203 are: (a) a managing director ("**MD**"), chief executive officer ("**CEO**") or manager, and in their absence, a WTD; (b) a company secretary; <u>and</u> (c) a CFO.

While Section 203 does not expressly prohibit an individual from holding two separate KMP offices (except that a chairperson can simultaneously hold an MD or a CEO office under certain circumstances), the conjunctive "and" between the KMP categories listed in Section 203 indicates the legislative intent to have separate individuals in each KMP role.

Facts and findings

The ROC examined a case in which EESL's CFO was additionally appointed as WTD while retaining the CFO role. The ROC found that permitting a single person to hold both positions conflicted with each other, thereby undermining the purpose of Section 203 and the underlying governance framework.

EESL argued that no express prohibition in the Act prevented one individual from holding multiple KMP positions within the same company. It contended that Section 203 required the appointment of KMPs but did not mandate that each position be held by a different person.

The ROC rejected this argument, adopting a purposive interpretation. It held that the legislative intent behind Section 203 was to ensure segregation of key managerial functions and accountability in corporate governance. <u>Moreover, WTDs are entrusted with distinct responsibilities in relation to governance and management of a company and should not be doubling up as company executives. Based on these findings, the ROC held that EESL had breached Section 203 and imposed penalties on EESL and its KMPs under Section 203(5) of the Act</u>.

Analyses

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- Segregation of Power: The ROC's order raises a key question, i.e., does Section 203 require merely a segregation of designations, or a true segregation of power?

  The ROC's interpretation contemplates functional separation, with each KMP exercising independent authority. The ROC treats the KMP framework as a mechanism for substantive checks and balances, not a mere formality. This aligns with the broader scheme of the Act, which imposes distinct duties and liabilities on each KMP category, recognizing that these roles serve fundamentally different governance functions.

- Governance: Section 166 prescribes directors' duties, including the duty to exercise independent judgment and act in good faith. A director who, for example, also serves as the CFO will face difficulty exercising independent judgment on financial statements prepared by the CFO's office and signed off by the CFO. When two KMP roles vest in one person, attribution of responsibility becomes ambiguous.

  Beyond statutory compliance, the separation of financial oversight (of a CFO) from broader managerial authority (WTD/MD/CEO) provides a critical internal check. The CFO's gatekeeping function over financial integrity is compromised when the same individual holds executive authority over the operations being reported.

- Implications for listed and public companies: The order carries significant implications for listed and public companies that are subject to Section 203 and may have individuals holding multiple KMP positions. All such public company appointments should be reviewed and steps taken to change overlapping appointments.

  This issue becomes especially acute for multinational groups, as multinational companies commonly appoint a single executive to multiple capacities in foreign subsidiaries for operational efficiency or cost reasons. Multinational corporations should, therefore, also review their Indian governance structures and appoint separate individuals to distinct KMP positions.

- Implications for private limited companies: Although Section 203 excludes private limited companies, the National Company Law Appellate Tribunal, New Delhi ("**NCLAT**"), in the matter of *The Hamlin Trust v. LSFIO Rose Investments S.a.r.l.*, Company Appeal (AT) No. 77 of 2022 (NCLAT, September 7, 2022), has held that Section 203 can be used as a guiding principle for the appointment of a CFO, if the private company has appointed a CFO without there being a provision on this in the company's articles of association. Based on this ruling, it can be said that Section 203 of the Act becomes applicable to private companies, if the articles of association are silent on the appointment procedure but the company has otherwise provided for a CFO position.

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- Position in the US vis-à-vis in India: The USA takes a noticeably different approach. The Model Business Corporation Act expressly permits one person to hold more than one office. No statutory prohibition on role combination exists.

  However, separate CEO and CFO roles are a market and governance norm reinforced by reporting and certification of such reporting under the Securities Exchange Act of 1934, rather than a strict statutory mandate for role-separation. India's approach under Section 203 is more prescriptive, mandating separate KMP appointments by statute rather than relying solely on fiduciary principles.

Conclusion

The ROC's order represents a significant development in interpreting Section 203 and corporate governance. By adopting a purposive approach, the ROC has clarified that whole-time KMP appointments require genuine functional separation. Companies cannot comply by merely assigning different titles to one individual, and each KMP position must be held by a separate person devoting full-time attention to that office.

While this may impose additional compliance burdens, it serves the legitimate objective of ensuring accountability and effective checks and balances. Companies should treat this order as a mandatory regulatory requirement and proactively restructure their KMP appointments to comply with both the letter and spirit of Section 203.

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