LEXA ASHRAYA
ATTORNEY-AT-LAW

Ashok Sathyanathan
Founder
Mobile: +91-9619787832
Email: ashok@lexaashraya.in

Can One Individual Hold Multiple KMP Positions in the Same Company?

Section 203 of the Companies Act, 2013: Legislative Intent, Statutory Interpretation and Corporate Governance

The appointment of Key Managerial Personnel (KMP) under Section 203 of the Companies Act, 2013 raises an important question: **Does the requirement to appoint distinct categories of whole-time KMPs necessarily require each position to be occupied by a different individual?**

The question assumes significance in light of the ROC Gwalior order dated 29 June 2026 in the matter of EKI Energy Services Limited, which held that an individual cannot simultaneously discharge the functions of Chief Financial Officer (CFO) and Whole-Time Director (WTD) without appointing another person as CFO.

The order brings into focus a larger issue: whether statutory requirements concerning distinct managerial functions can be interpreted as mandating separate individuals, despite the absence of an express prohibition against multiple positions within the same company.

1. The statutory architecture: What does Section 203 require?

Section 203(1) mandates prescribed companies to have the following whole-time KMPs:

1. Managing Director, CEO or Manager and, in their absence, a Whole-Time Director.
2. Company Secretary.
3. Chief Financial Officer.

Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 extends this requirement to every listed company and every other public company having paid-up share capital of ₹10 crore or more.

Three provisions are particularly relevant:

- **Section 203(2):** Requires appointment of whole-time KMPs through Board resolutions specifying their terms and conditions, including remuneration.
- **Section 203(3):** Restricts a whole-time KMP from holding office in more than one company, subject to statutory exceptions.
- **Section 203(4):** Requires vacancies in whole-time KMP positions to be filled within six months.

The critical distinction is that Section 203(3) expressly regulates appointments across multiple companies but does not expressly restrict an individual from holding multiple positions within the same company.

The interpretative question: Does Section 203(1) require separate individuals for each prescribed KMP position, or merely require all prescribed positions and functions to be adequately discharged?

The provision identifies distinct positions and responsibilities but does not expressly stipulate that each must be occupied by a different individual.

2. Legislative intent: The Companies Law Committee's recommendation

The Companies Law Committee Report, February 2016, provides a significant legislative perspective.

Paragraph 13.11 specifically recommended enabling a qualified whole-time KMP to hold more than one position in the same company, with the objectives of:

- Reducing compliance costs.
- Optimising managerial capabilities.
- Providing flexibility in deploying qualified personnel.

This recommendation directly supports the permissive interpretation.

However, the recommendation was not expressly incorporated into Section 203.

The subsequent legislative changes expanded the definition of KMP under Section 2(51), including the ability to designate other whole-time officers as KMPs, but did not expressly enact the separate recommendation permitting multiple positions within the same company.

The legislative implications require a balanced interpretation:

- The recommendation establishes that multiple positions within the same company were consciously considered.
- Its non-incorporation means it cannot be treated as an enacted statutory permission.
- Equally, non-incorporation cannot automatically be construed as legislative rejection.

The distinction between paragraphs 13.10 and 13.11 of the Committee's report is also important. They address separate recommendations concerning the designation of KMPs and the holding of multiple positions.

The Committee's recommendation is relevant to legislative intent, but is not itself law.

3. Statutory interpretation: Is dual designation prohibited?

There are four important considerations.

A. Absence of express prohibition

- Section 203 identifies prescribed KMP positions and requires their appointment.
- It does not expressly prohibit one individual from occupying multiple positions within the same company.
- Interpreting the requirement for distinct positions as mandating distinct individuals arguably introduces an additional statutory condition.

Whether such a condition can be imposed through regulatory interpretation, particularly where penal consequences follow, is a legitimate question.

B. Scope of Section 203(3)

- Parliament expressly restricted a whole-time KMP from holding office in more than one company, subject to exceptions.
- No equivalent express restriction exists for holding multiple positions within the same company.

This supports the permissive interpretation, although it does not conclusively establish compliance with Section 203(1). The two provisions address different aspects of KMP appointments.

C. The significance of the conjunction 'and'

- The original argument relies on the word "and" in Section 2(51) to support separate KMP appointments.
- The relevant conjunction in that definition was omitted with effect from 9 February 2018.
- Further, the conjunction in Section 203(1) establishes cumulative statutory requirements, not necessarily a requirement for different individuals.

A conjunction connecting statutory categories does not automatically constitute a prohibition against dual designation.

D. The purposive interpretation

The ROC Gwalior order in EKI Energy Services Limited adopts a governance-oriented interpretation, reasoning that combining the CFO and WTD functions defeats the legislative objective of segregation and accountability.

While the objective is understandable, the distinction between separate statutory responsibilities and separate individuals performing those responsibilities remains critical.

A regulatory authority's interpretation of legislative purpose must ultimately be tested against the language and scheme of the statute.

4. Officer in Default: The scope and limitations of Form GNL-3

The question of multiple KMP appointments also has implications for determining personal liability.

Section 2(60) identifies the persons who may be treated as Officers in Default:

- **Clause (i):** Whole-Time Directors.
- **Clause (ii):** KMPs.
- **Clause (iii):** Board-designated directors, where there is no KMP.

MCA General Circular No. 1/2020 clarifies the approach towards determining responsibility for company defaults, recognising the role of WTDs and KMPs in day-to-day functioning.

Important implications:

- Form GNL-3 is not a blanket immunity mechanism.
- Board designation cannot override statutory categories of liability.
- Filing GNL-3 does not automatically absolve WTDs or KMPs.
- Individual liability must be examined under Section 2(60), having regard to the applicable statutory provision and the person's role in the default.

The EKI Energy order illustrates the importance of this distinction. Although the CFO/WTD was not personally penalised, the MD was penalised based on an earlier Board designation.

The order does not adequately explain this allocation of liability.

The broader lesson is that Board designation and filing of GNL-3 cannot substitute for a proper examination of statutory responsibility.

5. The governance dimension: Separate functions versus separate individuals

The statutory question must also be distinguished from the governance considerations underlying KMP appointments. For listed entities, Regulation 2(1)(f) of SEBI's LODR Regulations, 2015 defines CFO by reference to the person heading and discharging the finance function. It does not expressly require the CFO to be different from a WTD.

Nevertheless, combining executive and financial functions raises important governance considerations:

Area	Governance consideration
Financial oversight	Separation of financial reporting and executive responsibilities
Board accountability	Independent scrutiny of management decisions
Audit Committee	Objectivity in financial oversight
Internal controls	Checks over financial approvals and accounting judgments
Disclosures	Consistency across MCA filings and stock exchange disclosures

A dual designation may be legally defensible while remaining undesirable from a corporate governance perspective. **The distinction is fundamental: a governance risk does not automatically constitute a statutory prohibition.**

Conversely, the absence of an express prohibition does not eliminate the Board's responsibility to ensure effective segregation of duties and accountability.

6. Compliance and penalty exposure

Section 203(5) provides for:

Nature of default	Penalty
Company	₹5 lakh
Director/KMP in default	₹50,000
Continuing default	₹1,000 per day
Maximum additional penalty	Subject to statutory cap

The ROC Gwalior order in EKI Energy Services Limited demonstrates the practical exposure arising from an adverse interpretation of Section 203.

Board and management action points:

1. Review KMP appointments against Sections 2(51), 203 and Rule 8.
2. Examine Board resolutions, employment arrangements, MGT-14, DIR-12 and stock exchange disclosures.
3. Assess individual liability independently under Section 2(60).
4. Review GNL-3 filings without assuming blanket protection.
5. Prefer separate CFO and WTD appointments pending authoritative clarification.
6. Strengthen financial controls, responsibility allocation and independent oversight.
7. Rectify identified defaults promptly.

Rectification does not necessarily extinguish liability for the period of contravention. The actual rectification date may affect continuing penalty computation.

7. The larger question: Can regulatory intent substitute for statutory language?

The central issue is the distinction between:

- Separate statutory functions.
- Separate designated positions.
- Separate individuals occupying those positions.

The Companies Law Committee's recommendation, although not enacted, remains relevant to legislative intent. It demonstrates that multiple positions within the same company were consciously considered.

Equally, non-incorporation cannot automatically be construed as legislative rejection. Absence of express statutory permission does not necessarily establish prohibition.

The ROC's purposive interpretation deserves consideration, but must withstand scrutiny against the language, scheme and legislative history of Section 203.

Neither interpretation can presently be regarded as conclusively settled.

MCA clarification or an authoritative appellate determination would help resolve the uncertainty.

LEXASHRAYA
ATTORNEY AT LAW

8. Conclusion: Compliance versus governance

Pending authoritative clarification, companies, particularly listed entities, should adopt a conservative approach and maintain separate CFO and WTD appointments wherever practicable.

The EKI Energy order provides an important regulatory reference point, but remains an ROC adjudication order and not a judicial precedent establishing a universally binding prohibition against dual designation.

The central legal position requires balance:

- Absence of express prohibition does not conclusively establish permissibility.
- Equally, a governance objective cannot automatically become a statutory prohibition without sufficient legislative support.

Statutory compliance and sound governance are related, but not interchangeable.

A structure may satisfy the literal requirements of legislation while raising governance concerns. Conversely, a desirable governance practice should not automatically become a mandatory statutory requirement.

Ultimately, the question is not merely whether one individual can hold multiple positions. It is whether the law requires separate individuals and whether the company's governance framework can credibly demonstrate that each statutory responsibility is effectively discharged.

The issue warrants closer examination at the intersection of legislative intent, statutory interpretation and corporate governance.

***Disclaimer**: This article is intended for general informational and academic discussion and does not constitute legal advice. The analysis reflects the statutory framework and materials considered as at October 2026. The appellate status of the ROC order has not been independently verified.*

LEXASHRAYA
ATTORNEY-AT-LAW