ONGC seeks exemption from some governance provisions

Says listing regulations don't apply to it as govt makes board appointments

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State-owned Oil and Natural Gas Corporation (ONGC) has sought exemption from the applicability of some of the corporate governance norms, especially those pertaining to the board's composition and evaluation, people in the know said.

ONGC is learnt to have told the Securities and Exchange Board of India (Sebi) that since the government holds the power to make board appointments in the company, performance evaluation provisions do not apply to it, and hence it should be exempted from the Listing Obligations and Disclosure Requirements (LODR).

The move follows the imposition of penalties and penal action by the stock exchanges on several public sector undertakings (PSUs) for lapses in meeting various listing regulations.

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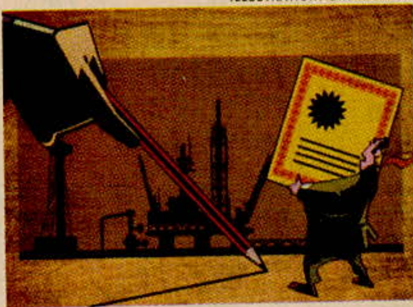
FRICTION POINTS

Governance norms most PSUs are not complying with

- **Disclosure** of board evaluation
- **Evaluation of skills** of directors
- **Performance review** of independent directors
- **Number of directors** – half the directors should be independent directors, including at least one woman

ILLUSTRATION: BINAY SINHA



PSUs' contention

- **Appointment of board of directors** is made by govt
- **Matter being regularly pursued** with the administrative ministry
- **Certain governance rules are in conflict** with laws applicable to PSUs

ONGC seeks...

Extended periods of non-compliance can also lead to trading suspension.

An email sent to ONGC remained unanswered.

ONGC had sought a similar waiver from the Ministry of Corporate Affairs from the Article of Association provisions. Sources said the ministry exempted the firm with respect to the evaluation and board performance norms under the Companies Act.

Non-compliance of LODR norms is common among PSUs. Several of them have failed to appoint women directors or have the requisite number of independent directors on their boards.

While the stock exchanges and Sebi can take strict action against listed firms in the private space, regulating PSUs in such matters becomes a contentious issue as their promoter is the government of India. "It is difficult to implement the new governance norms for state-owned entities since there is a wide gap in administrative procedures between the public and private sector companies," said a company secretary.

Sebi's standard operating procedures say any company violating the corporate governance rules for more than two successive quarters and not paying the fine should be shifted to the trade-to-trade category. ONGC earlier faced the heat for having less than 50 per cent of the board of directors as non-executive directors, not reviewing performance of independent directors, and so on. The NSE had then levied a penalty of ₹1,30,000 on the gas explorer.

"I have always said PSUs should be exempted. These are not board-run but ministry-run companies. All directors are appointed by the government. Independent directors are not independent as they too are appointed/nominated by the promoter, in this case the government. Many PSUs continue to be non-compliant on, say, the number of independent directors or woman directors, but for no fault of theirs. The market also recognises this reality. An argument in their favour is that they are subjected to additional oversight by the Comptroller and Auditor General and Parliament," said Prithvi Haldea, founder, Prime Database.

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