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Corporate Governance Norms in State Owned Enterprises: Can Apples be used to assess Oranges?

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Introduction

"... it was nothing but mere financial engineering to shift money from one pocket of the exchequer to the other…The committee would, therefore, recommend that IRDA should enquire into this issue and investigate whether LIC has violated prudent investment norms and exceeded the limit stipulated by them," - Standing Committee of Parliament on Finance[i]

"According to the Parliamentary Panel, this act by the government will adversely affect 29 crore policy holders of LIC."[ii]

These views largely reflected the public sentiment surrounding the divestment of 5% stake in the state owned Oil and Natural Gas Corporation (ONGC) on 1st of March 2012 and subsequent rescue act by another state owned enterprise Life Insurance Corporation (LIC) which bought 95% of the offloaded stake. This episode has drawn renewed attention to governance in state owned enterprises (SOEs) and the role of government- the sole (in some) or majority shareholder (in most) of the cases. Using this episode as the backdrop, this paper seeks to explore the issues surrounding corporate governance in SOEs and seeks to understand whether existing norms adequately address the governance challenges. In what follows, we begin by briefly describing the episode, the protagonists and the governance challenges which they present in the current scenario. In the next section, we discuss the role of SOEs and the norms of their governance as they have evolved till recent times. In the concluding section we debate whether the norms as they exist are adequate to provide effective governance of SOEs in the light of the challenges identified previously.

ONGC Divestment: Postmortem of a fiasco[iii]?

ONGC, originally set up as an independent commission in 1956 was converted into a fully state owned corporation in 1993. The only Indian company to figure on Fortune's "World's Most Admired Companies" ONGC remains India's most valued SOE at a networth of Rs.114,531 crores in 2010-11 (Annual Report). As an acknowledgement of the superior capabilities of the SOE, it was awarded the Indian government's "*Maharatna*" status in November 2010. This status promised to vest it with considerable autonomy included in strategic decision making like making equity investments, mergers and acquisitions. The company today has presence in all upstream and downstream operations in the natural oil and gas domain and ranks 18th in the global energy companies as per Platt's Top 250[iv]. The company has numerous awards to its credit including the Golden Peacock for Good Corporate Governance[v].

Since India's liberalization began in 1991, the government has been pursuing a policy of divestment of SOEs. In line with this, the government on various occasions in the past offloaded its stake in ONGC and as of March 2011, it retained only 74.14% of the stake (See Table 1 for details of share holding).

<u>Table on ONGC Shareholding Structure</u>

Sl No.	Shareholder	% age of total shares held	Sl No.	Shareholder	% age of total shares held
1	President of India	74.14	6	LIC of India Market Plus	0.48
2	Indian Oil Corporation Ltd.	7.69	7	LIC of India Money Plus	0.48
3	LIC of India	3.06	8	ICICI Prudential Life Insurance Company Ltd.	0.43
4	Gas Authority of India Ltd.	2.40	9	LIC of India Market Plus - 1	0.39
5	Franklin Templeton Investment Funds	0.93	10	LIC of India – Profit Plus	0.37

<u>Source from ONGC website. Data as on March 31st 2011.</u>

The current divestment was a continuation of the same policy and it had been on the cards for several months being first proposed in November 2010[vi]. The offer finally happened on 1st March 2012 through an "offer of sale"[vii] The government proposed to raise close to Rs.12,000 crores through a sale of about 40 crore shares at an offer price of Rs.290 per share. Till about ten minutes prior to the official closure of the auction (i.e., at 3:20 p.m.), the stock exchange updates showed that bids for 29.22 crores of shares worth about Rs. 8,500 crores were received[viii]. The same evening government announced that its divestment had been a great success and that there were some glitches in the systems because of which the trades could not be executed earlier[ix]. This apparently implied that in the ten minutes remaining for the trade to close for the day, Life Insurance Corporation of India (LIC) had purchased enough shares so that at the end of the sale, LIC had invested close to Rs. 11,450 crores in purchasing 377 million shares at an average price of Rs 303 per share. The entire turn of events, prompted cries of "foul" and echoed the Parliamentary Panel's views. Post mortem analysis in newspapers reported various aspects but primarily the apparent arm-twisting of LIC by the government and tepid investor response.

LIC, just like ONGC, was also incorporated in 1956 and is wholly owned by the government. With assets worth Rs. 13.25 trillion (as reported on website in June 2012) it is one of the richest SOEs and funds close to 24.6% of the government's expenditures[x]. Holding the savings and trust of close to about 30 crore policyholders, LIC represents the security of the government for the people of the country and has consistently been chosen as one of the most recognized and admired brands in the country and has received the Golden Peacock award for innovative products and services. LIC's portfolio includes equities in several SOEs and also blue-chip private companies. Following the ONGC investment, LIC's total holding in ONGC stands at 9.48%, i.e., close to the prudential investment norms and exposure limits of 10% prescribed by the regulatory authority for insurance companies - IRDA. This is the second such limit that LIC has or is breaching. It's recent investments in cash strapped state owned banks too has been near about the exposure limit. The immediate plummeting of the share price of ONGC post the divestment to Rs 283 per share and further to about Rs.260-270 per share now in less than 5 months (See Figure 1: Stock movement of ONGC) has led to the notional loss of about Rs.1000 crores[xi]. All this contributed to LIC being downgraded by Moodys from a Baa2 to Baa3[xii] citing its overexposure to government scrips.

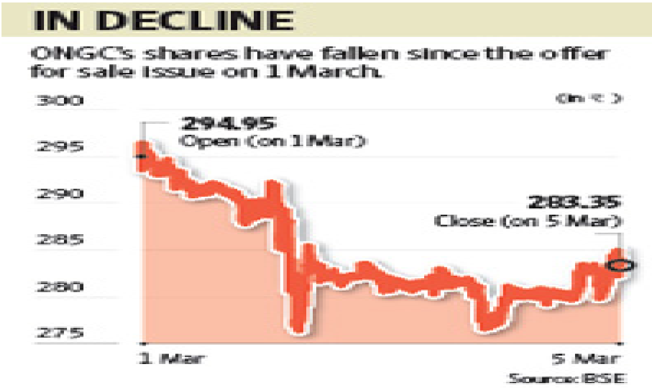

Figure on Stock price movement of ONGC share 5 days including the date of divestment

Source – news article from Live mint based on BSE/NSE share price disclosure

While, the exact happenings during the auction can be known only after the completion of the ongoing investigation by SEBI (Securities and Exchange Board of India) and IRDA, facts as they presently stand (as can be garnered from newspaper reports and other information in the public domain) raise several more important concerns beyond simple blame-fixing (which an investigation by the agencies will achieve). They are as follows:

Firstly, the fixing of the floor price at Rs. 290 per share itself has been a debatable issue. ONGC had been trading at Rs 282 prior to the auction (when the disinvestment was first announced in 2010 November end –it was trading at close to Rs 310 per share). Given the continued turbulence in the petroleum sector with volatile prices and the unresolved issue of fuel subsidies, the markets were expecting a pricing around Rs.275 per share. The government pricing the share at a premium of Rs.7-8, a decision which possibly even the management of ONGC and its investment committee were unaware of[xiii] suggests that government was possibly not looking at generating sufficient investor response. The 4.5% premium on the price defied conventional logic.

Even though the stock belonged to a profit making and most valuable SOE, it was of a company caught in severe policy and global fuel market turbulence. Even as the price was announced, it appeared that investor response could only be tepid and that the government's decisions were being driven by other considerations and not the conventional logic that underlies equity markets. While government could follow any number of reasons to chose a certain price and not restrict itself to conventional logic, what makes it problematic is the inaccessibility and elusiveness of this logic to the common investor and the public at large which leads to unbridled speculation about 'intent' and the construction of a "charade"[xiv] and thus an undermining of trust that is essential for the effective functioning of these market institutions.

Secondly, within days of the completion of the divestment, the government in its budget for the year 2012-2013 announced an increase in cess on petroleum crude from Rs.2,500 per tonne to Rs.4,500 per tonne. The increased cess was bound to impact the profitability of the company and to the ordinary investor, this presented itself as a case of the government trying to pull a fast one on the investor. It has been particularly hard for the ordinary investor to believe that this proposal to increase cess (which had not been revised for the previous 4-5 years)[xv] would have been thought of within the few days after divestment and it caused particular annoyance that this vital piece of information which affected the investment potential for an investor was withheld by the major shareholder, being the government in violation of disclosure principles. What further added to the indignation of the investor was the manner in which under-recoveries in fuel were allocated to ONGC. Typically, these under-recoveries have been shared between the government, the oil marketing companies and the three upstream companies- ONGC. GAIL and IOC and yet in all these years, there has not been any properly spelt out mechanism that addresses the issue of allocation of under-recoveries, an issue that impacts both the fiscal deficit of the government and the profitability of the companies in question.

The arbitrariness of this allocation decision is obvious from the fact that in the last six years including the fiscal ending March 2012, the under-recovery burden for upstream companies has varied between 31% to 42% and for oil marketing companies between 0% to 21%[xvi]. This uncertainty regarding the burden to be shouldered by an SOE has serious repercussions under a regime of globally rising fuel prices which increase the total value of the subsidy burden and thus profitability of the SOE. For instance, though ONGC shares only 40% of the under-recovery burden this year as a proportion between the three entities, an increase of just one percentage point from 2010-11, it represents an increase of 79% in absolute terms year on year for ONGC, the amount of written off subsidy was Rs. 44,466 crores in fiscal 2011-12 as against Rs 24,892 crores in 2010-11[xvii]. This arbitrariness underlines the agency problem Type II (Villalonga & Amit, 2006) at work where the majority shareholder, the government, takes the interests of the minority shareholders for granted and works for its own interest of managing budgetary deficits. Just like the cess, this too raises concerns of disclosures and transparency because, more transparent mechanisms of sharing under-recoveries, could contribute to better risk management strategies for a company and thus better attempts at ensuring profitability (which in turn takes care of the interests of the minority shareholders) and thus more effective governance of the SOE.

Thirdly, defending its decision to invest in ONGC, LIC's Chariman Mr. Mehrotra and the Secretary of the Ministry of Divestment Mr. Khan had both said that LIC had been interested in the ONGC scrip for the past several months and that it was not a sudden decision[xviii]. This assertion raises a very prudent question as to why LIC which has been purchasing shares in the open market for a much lesser price, close to 20% discount on the auction price before the divestment did not buy further in the open market but chose to actually purchase the stock at a much higher premium at Rs. 303 (Rs. 13 higher than the floor price even though the investor response was very dull) during the divestment. What could possibly have prevented LIC from negotiating for a lower price given that the total number of bids was still lower than what was on offer at that point of time? The fact that LIC's bids only became available towards the close of the auction and not earlier, raise further questions about LIC's intent to invest in ONGC. Was it a genuinely thought out prudent investment decision or the outcome of pressure being exercised on LIC's management but its owner- the government? Information available so far, points to the later. Given, that the government went into a huddle with various officials on the afternoon of the auction, when it realized that it had not generated enough bids, it is plausible that government had urged LIC to intervene.

The claims of LIC and the ministry of divestment about pre-existing and continued interest in ONGC stock by the former seem less than believable in this light. It also seems unlikely that even if LIC was asked to rescue the government, it would have had enough time (less than a couple of hours) to follow due process of getting this highly significant investment discussed in its investment committee. On the other hand, it seems more plausible that the two government nominee directors who had recently been placed on LIC's board by the government and who eventually became part of the investment committee of LIC[xix] must have taken a quick call to extend a helping hand to the government, so that the government could respectably walk out of the stake sale. While, one SOE investing in another SOE or related companies having cross holdings is not uncommon, what makes matters problematic is the manner in which the interests of the millions of policy holders whose savings LIC holds in trust seem to have been short changed in this bid to assist the government. While only time can tell whether LIC's stance of "investing in the long term" actually pays off, in the near term the notional loss of about Rs 1000 crores tells a different story. It appears to be a case of the classic agency problem Type III, where the company's owners - the government appear to be acting to the detriment of the customers- the policy holders. Would effective governance condone such less than thoughtful at worst and controversial at best investment strategies that appear to be more a product of government autonomy rather than prudent business thinking? Can effective governance which in principle seeks to facilitate good management practices turn a blind eye to processes which undermine its very own raison de etre?

A fourth concern arises from the manner in which LIC has been engaged in systematic purchase of ONGC shares in the open market in the run up to the divestment. This could be construed as an attempt to create an artificial interest in the stock and jack up the stock price prior to the divestment. LIC increased its shareholding of ONGC by approximately 1.9%, from its earlier reported 3.1% at end of September 2010 to about 5% by end of November 2010. Some more shares were bought between December 2010 and February 2011, suggesting thereby that the buying might have helped the share maintain its momentum in an otherwise dull market. This behavior is in marked contravention to the SEBI insider trading norms whereby it stipulates that "…the principal or its intermediary may not engage in a buying or selling activity preceding a significant order…."[xx]. This interpretation of the events assumes greater weight given the size of the transaction just completed by LIC. Yet, SEBI has condoned this behavior and facilitated the transaction by permitting the execution of the trade beyond the regular market closure timings. If a private sector enterprise had been involved in a similar kind of an activity, it would have automatically drawn the attention of SEBI and the Ministry of Company Affairs (MCA) and the matter would have been referred to the Serious Fraud Investigation Office (SFIO) of MCA for possible fraud and insider trading activities. Does government ownership absolve the SOE from the applicability of these norms? The greatest concern posed by these developments is the systematic manner in which they contribute to the undermining of the trust in the institutions of the market.

National Interest: The raison de etre of SOEs

SOEs have been primarily a post-Independence phenomenon in India barring some essential public services like Railways and Post and Telegraph which were formed during the colonial period itself. That government would have to take up the initiative and set up enterprises in the core sector was evident in the Bombay Plan of 1944 itself before independence. With an economic growth rate of around 3.5% during late 1940s[xxi] and the difficulty in mobilizing the private capital necessary for setting up the core and capital goods industries that were necessary to stimulate economic growth and facilitate a shift from an agrarian to an industrial economy it was imperative that the government resort to public financing of these enterprises. Thus came into existence the Nehruvian “Temples of Modern India” marking the beginning of the saga of the SOEs. What distinguished the setting up and operations of these SOEs was the explicit emphasis on national interest as against market opportunity and profitability. Thus the location and functioning of several major SOEs has been contingent upon the exigencies of the politics of nationalism, development and employment rather than a pure techno-economic rationality of operational and locational efficiency. This approach continued for several decades and successfully facilitated the emergence of an industrial India and a vibrant private sector. Currently, India has about 1700 SOEs spread between Central SOEs (about 30%) and State level SOEs (remaining 70%)[xxii] which contribute to about 10% to the country’s GDP[xxiii]. The few listed SOEs on the BSE sensex contribute to 40% of its total market capitalization[xxiv].

It is this political-economic notion of national interest as against a techno-economic rationality that has been the distinguishing feature of SOEs. The industrial policy resolution of 1956 clearly specified redistributive, welfare and other macroeconomic objectives for SOEs. And India’s current standing in the world can also be significantly linked to the role played by these SOEs and these (excluding those that which were originally private but subsequently nationalized to safeguard stakeholder interests) have actually reported better performance than private sector enterprises according to studies by CMIE (Dewan, 2006b). Though national interest and public welfare defies any easy definition or articulation it is this idea that in some way could legitimize the entire course of actions involving the present divestment of ONGC stake and the role played by LIC in the process. ONGC represents energy security for the country in that the very rationale for its establishment has been the desire to become self reliant in carbon fuels. Even present day

ONGC’s vision and mission underline the Indian commitment by specifying “enhancing India’s energy availability” even as it speaks of becoming a “global leader in integrated energy business” (ONGC, Annual Report 2011). Thus ONGC plays a key strategic role in the macroeconomic, security and sovereign affairs of the nation and enabling broader investor participation could risk undermining strategic national interests. This could be a likely reason for just 1.36% of ONGC stock to be with private non-SOE investors even though previous divestments offloaded 25.86% of the company. Bulk of it is held in cross holdings by LIC, LIC’s mutual funds and other state owned energy companies. To that extent the current bulk investment of LIC in ONGC too could be construed as a continuation of the same strategy.

The issues of floor pricing of the stock and the timing of the divestment can both be similarly explained from the macroeconomic perspective of managing the fiscal deficit of the country. The government had proposed to raise close to Rs.40,000 crores through divestment in the fiscal 2011-12, yet it could not materialize. The fiscal deficit appeared quite significant and the country risked investment downgrade with major macroeconomic repercussions unless quick steps were taken to reduce the deficit. Therefore the pricing and the divestment timing were both an outcome of an attempt by the government to actually meet its budget shortfall.

Yet it is these very objectives of national interest and public welfare which have come in for criticism from various quarters. The reasons for this are two-fold. The primary reason emerges from the pursuit of the neo-liberal agenda where it has been argued that following these national and social objectives deflects the enterprise from the primary objective of creating value for shareholders and breeds inefficiencies. These inefficiencies in turn lead to a strain on public finances and contribute to macro-economic distress in a country. Instead, a pure focus of the SOE on creating shareholder value should itself be seen as a pursuit of national interest. Thus the government should ideally move out of the business of business i.e., divest, and if for reasons of history and policy, it cannot do so and has to continue with SOEs, it should maintain arms-length relationship with the SOEs and permit full operational and strategic autonomy so that the SOEs can go about the process of maximizing enterprise value and contribute tax revenues and dividends to the government budget. The government which has withdrawn from managing businesses should focus on providing effective regulation so that externalities are reduced and it becomes possible for the firm to take into consideration the interests of all stakeholders in its pursuit of enterprise value maximization (Bhattacharya, 2006; Dewan, 2006).

The second reason stems from the vagueness and lack of clarity about what constitutes national interest. The amorphous, nebulous, indeterminate character of the idea of ‘national interest’ permits the goal of ‘national interest’ to turn into a highly commodious cloak which covers and hides inept and bad policy and governance. Thus the logic of reducing fiscal deficit which can be put forward to justify the current ‘divestment act’ deflects attention from an analysis and engagement with why such a deficit came to exist in the first place and whether this entire ‘act’ could have been avoided with more prudent policies. National interest can be (ab)used as a catch-all phrase which is expected to silence all criticism and questioning. A related issue that emerges from the commodiousness of ‘national interest’ is the problem of prioritizing the various possible national interests. Even in the present case of ONGC divestment, there are the national interest issues of energy security, reducing fiscal deficit. But there are also the other national interest issues of the signaling effect of the divestment and its process to the investor community at large and the likely undermining of trust in the institutions of market governance and regulation. Can it be argued that the former represents a more serious concern rather than the later, probably not. For, the entire logic of preserving India’s attractiveness as an investment destination which is implicit in the attempt to reduce fiscal deficit gets undermined if trust in its institutions of market governance and regulation is compromised. Thus, both are not really unrelated and distinct but closely related, feeding back into each other. If this be the case, justifying current course of action under the rubric of national interest would not be appropriate or even logically possible. This entire ‘act’ only brings into sharper focus how open to governance abuse the highly normative political-economic ideal of ‘national interest’ is and makes an engagement with the issue of governance mechanisms that address such an abuse highly pertinent and timely. Yet, the history and evolution of SOE governance follows a trajectory that more often than not fails to even acknowledge the governance challenges implicit in national interest let alone propose mechanisms for dealing with it.

SOE Governance

When the SOEs were first set up, their management rested with the parent ministries and they were subject to periodic public oversight through parliamentary committees and other constitutional bodies like the comptroller and auditor general of India. The intent underlying these governance arrangements was the “public trusteeship” expectation from the executives managing the SOEs. These executives were custodians of public wealth and they could not use it for their private gain. Thus, in a manner of speaking SOEs were subject to greater public oversight than private enterprises because they were under the control of the ministries. Firm efficiency was nowhere on the horizon at that time. By 1970s, firm performance started appearing with the emergence of various management problems and sickness being reported by firms. It was increasingly felt that more technical and specialized managerial knowledge and skill was required for managing the operations of these SOEs on an ongoing basis.

In 1972, the Bureau of Public Enterprises took the first step in creating independence for the SOE by recommending the creation of the position of a Chairman cum Managing Director along with a part-time director who would assist him/her to oversee the functioning of the SOE Board. This would provide it a modicum of autonomy from the administrative oversight of the parent ministries. The Administrative Reforms Committee of 1975 suggested further independence for the SOEs and the need to include non-government individuals on the Board so that operational efficiencies could be pursued. Government could step in for strategic direction. This has been very much in line with the idea of “managerial governance” identified by Gomez & Kerine (2008) where they identify the expert knowledge of management as the locus of governance following the decline of “familial governance” or “governance by the owner directly”.

With liberalization in 1991, full time directors for the Board and minimal representation for the government on the Board became the governance norm. This independence was meant to enable the SOEs to become competitive in the liberalized regime and start focusing on efficiencies. Liberalisation also brought in disinvestment of SOEs not just as an outcome of the structural adjustment programs introduced then, but also as a reflection a general public sentiment about inefficiency and inept management of SOEs given that several of them had been declared sick or were underperforming. The listed companies were subject to governance norms as specified by the market regulator SEBI. Liberalisation underlined the need for market reforms and this began with the creation of a market regulator SEBI (Securities and Exchange Board of India) which enforced a set of corporate governance guidelines suggested by the Birla Committee of 1999 through clause 49 on all listed companies which mainly covered private sector enterprises and few listed SOEs. This put almost 90% of the corporate sector including SOEs outside the ambit of compliance with any corporate governance standards. SEBI followed up the ideas of Board independence through independent directors and auditing improvement raised in the 1999 committee with the Narayana Murthy committee in 2004. This committee's major recommendations dwelt upon audit committees and reports, independent directors, related party transactions, risk management, directorships with regard to their compensation and training, codes of conduct and financial disclosures and prescribed far more stringent guidelines for independent guidelines. These were subsequently enforced by SEBI. Commenting upon these developments in governance of SOEs it has been suggested that "while pre-liberalization reforms suggested a separation between the owner and the controller, i.e., the government and the board, respectively, the post-liberalization SEBI guidelines suggested a balance of power between the insider, i.e., the executive chairman and the outsider, i.e., the independent director" (Dewan, 2006a:xx). The Memorandum of Understanding (MOU) an instrument for enabling autonomy of SOEs which was first used before liberalization continued to be used rather extensively after liberalization. Categories of Navaratnas, Miniratnas and Maharatnas were created based on the firm performance and its strategic importance so as to determine the extent of autonomy an SOE would have. Typically these *ratna* companies were given much higher autonomy than others and the Maharatnas were meant to have even strategic autonomy and ONGC is one of those five Maharatna SOEs.

Ministry of Company Affairs closely followed through with a committee of its own in 2002 and with another committee in 2004 (Irani Committee) to examine and revamp the Companies Act of 1956 which was the primary basis of governance of all public companies and to that extent applied to SOEs as well. The Irani Committee's report was ready by 2005 though the pursuant Act is still to be tabled and passed by the Parliament. The recommendations of this Committee and the content of the draft Bill formed the basis for the Voluntary Guidelines on Corporate Governance for Central Public Sector Enterprises (CPSEs) which were released by the Department of Public Enterprises (DPE) in 2007. These were adopted by the government as a trial for a period of one year and subsequently in 2010, following a cabinet decision, compliance with these guidelines was made mandatory for all CPSEs.

These Guidelines on Corporate Governance for CPSEs are primarily informed by the templates designed for the private sector enterprises and enforced by SEBI under both the Birla and Murthy Committees. The SEBI guidelines in turn closely follow international, specifically US and UK corporate governance norms. For instance the report of Sir Adrian Cadbury of UK clearly specifies that "corporate governance is all about the company's Board of directors who are responsible for the direction and control of the company's resources and outcomes of operations" (Dewan, 2006c:15) and the emphasis on ensuring the independence of the Board and facilitating their effective performance through appropriate compensation and training is evident in the SEBI norms and flows through into the CPSE guidelines.

Given that the governance reforms in India were also carried out in response to not just domestic developments but in the context of global developments as well, they closely follow Anglo-American developments like the Sarbanes-Oxley Act. "There are striking similarities between Clause 49 and the leading Anglo-American corporate governance standards, in particular the Cadbury Report, the OECD Principles of Corporate Governance, and Sarbanes-Oxley. The similarities (although not a complete overlap) are particularly significant with respect to provisions applicable to the board of directors, disclosure to shareholders, and internal controls. While certain details differ, Clause 49 reflects a set of rules dominated by concerns about the conduct of boards and protection of shareholder rights." (Pande, 2011b). This clause 49 actually suggests that there be up to 50% independent directors (i.e., those who do not have any material relationship with the firm) on the Board. Further, the guidelines on corporate governance prescribed by the DPE cover issues related to the Board and independent directors, audit committees, disclosures, ethics and code of conduct, risk management and reporting. Thus while SEBI's norms are in line with the best in class globally for the private sector, it remains an open question whether they and thus by implication the DPSE guidelines adequately cater to the governance needs of SOEs in India.

Important differences exist between governance challenges in India and abroad. Varma emphatically points this out when he says "governance issue in the US or the UK is essentially that of disciplining the management who have ceased to be effectively accountable to the owners. The solution has been to improve the functioning of vital organs of the company like the board of directors. This has been informed by an agency theoretic perspective. The problem in the Indian corporate sector (be it the public sector, the multinationals or the Indian private sector) is that of disciplining the dominant shareholder and protecting the minority shareholders. A board which is accountable to the owners would only be one which is accountable to the dominant shareholder; it would not make the governance problem any easier to solve" (1997:13). Continuing further, Varma adds, that in theory, it is possible for the Board to discipline a management, but it is theoretically impossible for a Board, whose appointment is decided by the dominant or majority shareholder (following shareholder democracy) to discipline this very shareholder. While this problem can to a certain degree be addressed in the private sector by having independent directors, because it is technically possible to have and identify persons who do not have any material interest in the company in question, it becomes practically impossible for the SOEs?

A person may be independent of government or may not be a bureaucrat but is implicated in the SOE as a citizen of the country and it is the country through its representative the President which owns the shares in SOEs and thus in principle he/she has a material interest in the company. Thus, the basic premise of Board independence which underlies existing corporate governance guidelines has limited scope in SOEs. Yet, it is in this direction that existing governance guidelines engage. There has been an extensive emphasis on independent directors on the Board and even proposals for penalizing SOEs which fail to have such independent directors (even though their nomination is to be made by the government). There is of course some engagement with protection of minority shareholders' interests in existing guidelines. Yet, this also becomes problematic in the case of SOEs because an individual who might be a minority shareholder as a retail investor would find him/herself as part of the dominant shareholder, the state by virtue of his/her citizenship (excluding FIIs). So, in principle the majority and minority shareholder divide becomes problematic making the trade-off about the appropriateness of a certain business decisions a contest between techno-economic efficiency and political-economic national interest. Historically, these two objectives have been cast as incompatible, as contradictions and paradoxes (Bhattacharya, 2006; Sinha et.al., 2010). As an interesting aside, it would be worth asking the question as to whether they truly are paradoxes. This is because, those who constitute the society, the general public whose interests are being debated are themselves implicated as investors, customers or suppliers- either individually or through intermediaries.

With regards to the national interest objective, OECD, acknowledging not just the structural differences between SOEs and private sector but also the importance of the SOEs to several non-OECD countries' economy, makes a very important pronouncement in its 2002 guidelines for SOEs where it says that "the specific issues of corporate governance should be designed in a way that the organization fulfills the macroeconomic policies of the government" (Dewan, 2006c:21). It is here that we are really concerned about the validity and utility of the existing corporate governance norms for SOEs. These norms which are drawn from the private sector do not recognize the role of 'national interest' and that extent, either make such pursuit by the Boards and management illegitimate or leave it open for abuse. Further, these norms as already explained focus on Board independence whereas, all the governance issues raised by the ONGC-LIC divestment act in effect point to a situation beyond the Board, beyond the company as Varma (1997) says.

The governance challenges identified early on in the paper, point in the direction of transparency and disclosures by the state so that the management and Board of the SOE in question can effectively manage the risk and the investors and customers too are aware of the promises being made and their likely fulfillment. However, the corporate governance norms as they exist discuss transparency and disclosures by the enterprise- their auditing practices, their financial and non-financial reporting practices and so on. What we have presently are norms which seek to govern the 'enterprise' of the SOE. Yet the governance challenges unique to SOEs arise not just because of the 'enterprise' and its 'management' but because of its 'state ownership' and 'national interest' and the ambiguity and commodiousness of these entities. Sadly we do not have anything in place in this regard. OECD acknowledges this need and suggests that "the government should develop and issue an ownership policy that defines the overall objectives of state ownership, the state's role in corporate governance of SOEs" (KPMG, 2010).

This in a way is similar to the MOUs and the granting of the Maharatna and Navaratna status and the autonomy implied by that. A perusal of the OECD's suggestion in earnestness would be needed to truly usher in the era of "public governance" that Gomez & Kerine (2008) identify as the hallmark of our times, being a system of governance wherein the public has access to most information and is thus in a position to make informed decisions, through capital markets. This will be in marked contrast to the agency theoretic perspective which currently dominates corporate governance norms. This would draw more on political theory and seek to engage with the public in a more political way including not just disclosures and transparency but also stimulating debates about the articulation of national interest(s) and thereby the goals of SOEs. Until such time as the state becomes obligated by norms to disclose its position and policies to enable effective governance, we would leave the door wide open for abuse and ineffective governance and the only recourse for "public governance" would then be the political process of elections, much to the detriment of the markets, because until such time as politics changes, markets will continue to remain ineffective and ill-governed.

Thus, until we address and engage with these essential features of SOEs, namely 'national interest' and 'disclosures and transparency by the state' as against the enterprise, corporate governance of SOES will remain a case of using apples to assess oranges.

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[i] http://articles.economictimes.indiatimes.com/2012-04-25/news/31399155_1_ongc-stake-sale-prudent-investment-norms-lic

[ii] http://www.yourmoneysite.com/news/2012/apr/yashwant-sinha-says-ongc-auction-sale-could-have-affected-lic-policy-holders.html

[iii] This particular divestment has been popularly viewed as a fiasco and fraud.

[iv] http://www.platts.com/SearchResults

[v] All information from company website and annual report

[vi] http://indiatoday.intoday.in/story/ongc-gets-divestment-nod-but-not-bhel/1/173861.html

[vii] The auction or 'offer for sale' is a special mechanism allowed by the stock exchange regulator introduced in the month of February this year, to give an option to promoter enterprises in releasing their shares in the market other than a normal follow on public offer.

[viii] http://articles.economictimes.indiatimes.com/2012-03-02/news/31116763_1_ongc-shares-auction-route-stake-sale

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[xxii] Source: Institute of Public Enterprise Database and Ministry of Heavy Industries Public Enterprises (Government of India, New Delhi), Public Enterprise Survey.

[xxiii] Source: Ministry of Statistics & Programme Implementation (Government of India, New Delhi), National Accounts Statistics: 2010-11.

[xxiv] Based on Capitaline Corporate Databases.