

Corporate Governance – Managing Companies through Crisis



Suhas Tuljapurkar

The author is a member of Technical Advisory Committee, NFRA. He can be reached at eboard@icai.in

It has been proven that strong and experienced boards following well-defined processes and set protocols are better positioned to make quality decisions and help organisations to prosper. Organisations need to move ahead proactively with future in mind so as to maintain their position and sail through thick and thin and overcome challenges in a sustainable manner. It is almost a certainty that unless the agenda of the Board includes sustainability at all levels, the companies will just aspire to be the 'best' but not the 'next'. Being the best is not going to be enough because the focus of the company would always be on being the best. Not just being 'The Best', but 'The Next', ought to be the new mantra. Read on...

The King, the Queen & the Emperor

In January 1996, Bill Gates wrote "Content is King"¹. He went on to add - "Content is where I expect much of the real money will be made on the internet, just as it was in broadcasting." In the grammar class, while teaching the difference between a proverb and an idiom, it was drilled in my head that 'God is in the Detail' is a proverb, 'Devil is in the Details' is an idiom. The proverb or the idiom, the importance of 'Details' became apparent and the both the God and the Devil moved from grammar to real- life situations. As a professional, the life taught us that the 'Money is in the

Details'. So, while 'Content is King', Profit became the Queen. Come COVID-19, we all learnt, understood, recognised, respected and bowed down to "Context is the Emperor".

The cardinal principle of 'Stakeholder at the Center' pivoted the stakeholder to the Kings' place. Long-term purpose of the business, together with short-term profits occupies the Queens' position. However, the issues such as risk and resilience have emerged and will continue to be the Emperor.

The Black Elephant

The Indian companies seem to have realised that there are Black Elephants in the



¹ <https://www.craigbailey.net/content-is-king-by-bill-gates>

room today². COVID-19 is an event that has redefined all relationships- business, family or social. It has once again taught the businesses that while the unplanned catastrophic events will strike them, preparing for these unplanned catastrophic events is only just one function relating to the risk. During the pandemic, business leaders have played a pivotal role in responding to the situation. Initially, the response was varied. Once the learnings pandemic improved, the responses were prioritised around—health, hygiene, social responsibility (proximate), social responsibility (general) and thereafter came the economic realities. While no one would have contemplated the pandemic, have the boards / business leaders now learned to plan for the catastrophic events? There is some criticism about the Directors' failure in identifying and dealing with the catastrophic events. Responding to 'unidentified catastrophic events', is predominantly a 'Risk' function. The Boards could have done better in mitigating risks arising from the unidentified catastrophic events. It is only now, after almost three quarters under lockdown, that the boards are focusing on developing resilience through governance.

The Good and Not-So Good Leaders

During COVID-19, we experienced diametrically opposite leadership traits in India. Some of the remarkable corporate leaders acted responsibly towards the stakeholders³. The activities undertaken by the Indian companies include donating funds, providing hotel capacity as the quarantine centre, IMFL manufacturers producing alcohol-based sanitiser, opening kitchens to supply food to migrant workers, making information available at the COVID Information Resource Centre, providing free Risk Mitigation Software and Standard Operating Procedures, to name a few. Some of the very innovative leaders caused their businesses to quickly launch products, services and solutions that were complimentary to their businesses. Doing good towards society during these times also makes good business sense. Then there are those remarkable leaders who were bogged down by the Black Elephant, its uncertainties, pecuniary consequences and simply the enormity of it all. There are also those remarkable leaders who adopted the '*conserve-the-cash*' mantra and did not care for anything else. The second set of remarkable leaders did not

act so responsibly *qua* their stakeholders. These leaders will now force their stakeholders to forget them or remember them for wrong reasons. The stakeholders (the clients / customers, included) will not recall the brands led by the bogged-down, not-so good leaders. In this sense, the good and not-so-good leaders will be remarkable in their approach and will be remembered by the stakeholders for a long, long time. "*What did you do during the lockdown?*", is the question that will haunt many leaders for a long time to come.

Corporate Governance in Crisis

There is enough empirical evidence to prove that good governance helps manage the companies through crisis⁴. Studies have shown that strong and experienced boards following clearly-defined protocols are better positioned to make good decisions. At a time when speed is of the essence, such as when a country is in the grips of open conflict, empowered boards and capable leaders can act quickly and decisively, sustaining the business, even in the midst of the worst.

One of our clients, a leading company in infection control solutions provider, who

² The coronavirus epidemic is not the proverbial 'elephant in the room'. It could, however, be called a 'black elephant' event. The environmentalist, Adam Sweidan, explained this idea to Thomas L. Friedman thus: "[It is] a cross between a 'black swan' — a rare, low-probability, unanticipated event with enormous ramifications — and 'the elephant in the room': a problem that is widely visible to everyone, yet that no one wants to address, even though we absolutely know that one day it will have vast, black-swan-like consequences." <https://corpgov.law.harvard.edu/2020/09/19/how-can-boards-prepare-for-unplanned-catastrophic-events/>

³ 'Note regarding Positive Developments in the Industry During Lockdown'—Adv Dr Girish Bakshi, July 3, 2020.

⁴ https://www.ifc.org/wps/wcm/connect/14e8598c-83ed-44fc-b0d4-ed55641d0cf9/Strengthening_Governance_During_Crisis_Merima_Buzadzic.pdf?MOD=AJPERESE&CVID=m611pG2

manufactures and supplies antiseptics, and disinfectants including surface disinfectants, has demonstrated remarkable resilience. The company has been manufacturing and supplying its products globally and has accreditation from various domestic and international certifying agencies. Even before COVID-19 was declared as a National Disaster under the Disaster Management Act 2005, the company entered into a rate contract for supply of disinfectants to the state-run hospitals. Infection control measures required that the COVID-19 hospitals do not turn into distribution hubs and that the doctors and healthcare specialists used proven products as per global standards.

When COVID-19 was declared as a National Disaster, firstly the export of some of the company's products were banned. Secondly, the decisions relating to the procurement of disinfectants suddenly shifted to the District Magistrates exercising powers under the Disaster Management Act, 2005. The funds available for the procurement of disinfectants came from the State Disaster Fund. From IMFL manufacturers to soap producers to specialty chemicals' company, everyone manufactured disinfectants and supplied it for free or at a marginal cost. Consequently, the company received cancellation of orders placed on it (including in a couple of instances after the disinfectants were supplied).

Based on the rate contract, the company had ramped up its manufacturing, on-boarded more employees and augmented its capacities.

Anybody would think that a disinfectant manufacturer would thrive during COVID-19 crisis. However, the company's exports stopped. Its local manufacturing stopped and within a matter of weeks, the company's survival became an issue. The leadership of the company demonstrated phenomenal resilience. Notwithstanding the travel ban, the company chartered an aircraft, flew its independent directors to the capital, dared to look into the eyes of the decision makers and convinced the opening of exports. India had exported sanitizers worth USD 485 million in 2018-19. However, on March 24, 2020 the Government prohibited exports of sanitisers (both alcohols based and non-alcohol based). On May 6, 2020 the government lifted ban on the export of non-alcoholic sanitizers, but prohibited exports of alcohol-based sanitizers to boost its availability in the domestic market. Later on June 2, 2020 the Directorate General of Foreign Trade (DGFT) banned export of alcohol-based hand sanitisers in containers with dispenser pump. Recently, on October 15, 2020 export of alcohol-based hand sanitisers in container with dispenser pumps also became free.

During this period, the company faced many challenges and resisted temptations. As always,

some touts came forward with a proposal of managing procurements through the District Magistrates. Following the success of public interest litigation (PIL) on PPE kits quality issues, some NGOs came forward to solve the problem through the same platform of filing PILs. The Board also valued the option of solving the problem through litigation.

The company's leadership demonstrated that it can use independent directors as the resources of the company. They ensured that questionable practices were not encouraged, and discouraged any unnecessary interference. They did not talk of shutting down, locking-out, furlough or the like. The leadership, through its commitment to good corporate governance, strengthened rebuilding of the company. They eliminated the risk on unnecessary interference by removing hindrances that could have prevented them from '*being good*'. They also paved a way to remove questionable practices. Good governance during the crisis and emergencies sends a very powerful message for rebuilding. Everyone at the Board is often vehemently arguing for rebuilding the business with a longer-term perspective in mind.

Short-Termism

'*Short-Termism*'⁵ as a noun finds place in almost all modern dictionaries. As the COVID-19 crisis has moved beyond two

⁵ Defined as 'a way of thinking or planning that only considers the advantages or profits you could have now, rather than the effects in the future' <https://www.oxfordlearnersdictionaries.com/definition/english/short-termism>



Good governance during the crisis and emergencies sends a very powerful message for rebuilding. Everyone at the Board is often vehemently arguing for rebuilding the business with a longer-term perspective in mind.

quarters, everyone expects that the quarterly reports for a few quarters to come will demonstrate the consequences of this pandemic. In this context, it is interesting to read extracts from the relevant reports:

- Studies have identified that there can be soft and hard approaches as possible solutions. Soft approach will entail spreading awareness on sustainable corporate governance practices or fostering regulatory initiatives through recommendations. Hard approach will involve setting minimum common rules to enhance long-term through legislative interventions.
- A September 2020 Position Paper⁶ makes out a very strong case to revisit the nature of short-termism.

The paper is not the sole proponent of need for the balancing act. It articulates: *“Covid-19 pandemic shut down most of the global economy in 2020. This event humbly reminded us that sometimes long-term planning cannot take place until short-term survival is ensured. Investors prefer companies managing and investing for the long term, but they have to understand that companies need to strike a balance between short-term operations and long-term planning. In some instances — such as most of 2020 — the short term can and should take precedence.”*

Notwithstanding the conundrum regarding the ‘quarterly reporting’ (and each such quarterly report taking into consideration Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements), 2015 with respect to the COVID impact) most of the Statutory Auditors are advising, and the boards are readily accepting, a medium-term to long-term outlook supported by the weeding out of all the old questionable accounting practices, qualifications and the like. While very few rogues will try to hide things under the pretext of the pandemic, most of the sensible leaders have embarked upon ironing

their accounting practices and revisiting their policies and practices amidst conversations of resetting by businesses.

Reference: The Development Committee of the International Monetary Fund, a ministerial-level forum that represents 189 member countries of the World Bank Group and the International Monetary Fund, on October 16, 2020 issued a statement after the online annual meeting.⁷ World Bank Group President David Malpass remarked that the pandemic *“could lead to a lost decade characterized by weak growth, a collapse in many health and education systems, and a new round of sovereign-debt crises.”* Every discussion about the role of directors in current context is focusing on the ‘Re’ factors. Building resilience, no doubt appeared as the most prominent agenda.⁸ Use of ‘Re’ has been revisited during the pandemic. The speed with which Mother Earth repaired itself startled many scientists, leading to the formation of a firm belief that the war against climate change is not lost. The corporate leaders used ‘Re’ more often than any other prefix. Reimagine, Rethink, Reinvent, Recalibrate, Redesign, Reengineer, Restructure, Revive, Repair, Rebuild, Reset, Restore.... The Re-factor strongly led to redefining Corporate Governance and its relevancy. In most of the

⁶ <https://www.cfainstitute.org/-/media/documents/article/position-paper/Short-termism-revisited.ashx>

⁷ https://www.worldbank.org/en/news/feature/2020/10/16/laying-the-foundations-for-a-resilient-recovery?cid=ECR_E_newsletterweekly_EN_EXT_AM2020&deliveryName=FCP_6_DM81624

⁸ <https://corpgov.law.harvard.edu/2020/09/19/how-can-boards-prepare-for-unplanned-catastrophic-events>

companies, the divide between the board and the management blurred, and everyone was united in the face of the catastrophe. ‘Resilient Recovery’ has been the catchword that described the optimism at the Boards. It is interesting to draw a parallel with ‘Surmounting Setbacks’ that was articulated by the World Bank on October 17, 2020 i.e., End Poverty Day. As the World Bank Group President, Mr. David Malpass said *“Even in the midst of a once-in-a-century crisis, I have confidence that sustainable solutions will emerge, in part by embracing constructive change.”* He expanded on this vision: *“Working together, I believe that we can shorten the downturn and build a strong foundation for a more durable model of prosperity: one that can lift all countries and all people.”* It may not be out of place to mention ten tenets articulated by Dr. R. A. Mashelkar in the context of building resilience during crisis. This definitely is the agenda for all boards of the companies.

10 Tenets to become Crisis Resilient

-Dr. R. A. Mashelkar

1. Adaptability
2. Agility
3. Resilience Thinking
4. Scenario Based Planning
5. Purpose-Driven
6. Platformisation
7. Digital Ready
8. Foster Self-Disruption
9. Climate Conscious
10. Autonomous Innovation



Board Agenda, ATRs and Impact

The once-in-a-century crisis has also catapulted hopes for once-in-a-lifetime opportunity. Sustainability solutions are already an emerging trend. During the pandemic while stock exchanges were trading, almost every other investment opportunity was absent, investors supported those companies that demonstrated responsible behavior, exhibited resilience and embraced these sustainability solutions. Whether in development of AI, moving from thermal to renewable, designing a new packaging label and evaluating entire supply chain, business ethics now play a major role in shaping the future of business. The Triple Bottomline, Environmental Social and Corporate Governance, Corporate Sustainability, Business Responsibilities no longer remain mere buzzwords at conferences and workshops, or even simply a part of shiny financial statements and photo ops. The agenda of sustainability has now moved from the conferences and workshops in luxurious hotels to

their rightful place i.e., the Board Rooms. The boards will have to drive the agenda of sustainability, not just from the point of view of Sustainable Development Goals, Corporate Social Responsibility, or Global Reporting Initiatives but by measures such as inculcating compassion, by adopting Green Chemistry and by embracing the fundamentals of Circular Economy. The board’s agenda items now ought to include Green Chemistry, Circular Economy, Corporate Compassion and Innovation. Each of these items will now be elements to be tracked as part of the Board’s Action Taken Report. The performance of the board will now be evaluated based on its measurable impact on these parameters.



The board’s agenda items now ought to include Green Chemistry, Circular Economy, Corporate Compassion and Innovation.

⁹ <https://live.worldbank.org/end-poverty-day-2020>

Good to Great

It is an inescapable conclusion that if the company aspires to move from being good to becoming great, the DNA of the organisation will have to be formed based on sustainability. As we know by now, if there is deformity in the DNA, there is recombinant DNA technology to solve the problem. There is no better time than now for companies to undertake the genetic reengineering of its DNA so that the organisational culture is reset correctly. World Economic Forum's COVID-19 Risks Outlook¹⁰ published in May, 2020 outlines that *"Despite the grim economic outlook, the solidarity created by the COVID-19 pandemic offers the possibility of investing in building more cohesive, inclusive and equal societies. When it comes to the environmental agenda, the implementation of green stimulus*

programmes holds the potential to fundamentally change the way economies and industries operate, especially as societal behaviour change may spur more sustainable consumption and mobility habits. For businesses, the opportunity exists to accelerate a transformation towards more sustainable and digital operating models, while enhancing productivity. When it comes to the Fourth Industrial Revolution, technology has demonstrably helped societies manage the crisis and provided a window into the benefits of more technology-enhanced ways of learning, working and producing – from telemedicine to logistics to the knowledge economy. There is potential for a new era of innovation, growth and enhanced technology governance in the service of societal and environmental goals."

It almost imperative that unless the board's agenda includes



Being the best is not going to be enough because the focus of the company would always be on being the best, albeit 'in-time'. Not Just Being 'The Best' but 'The Next' ought to be the new mantra.

sustainability at all levels, the companies will just aspire to be the 'best' but not the 'next'. Being the best is not going to be enough because the focus of the company would always be on being the best albeit 'in-time'. Not just being 'The Best', but 'The Next', ought to be the new mantra. ■■■



¹⁰ http://www3.weforum.org/docs/WEF_COVID_19_Risks_Outlook_Special_Edition_Pages.pdf