excellence enablers CORPORATE GOVERNANCE SPECIALISTS
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Expert Expressions
Corporate Governance Demystified

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Looking back at the year gone by, one experiences a strange sense of despair and dismay, compounded by disbelief. Could things have gone so horribly wrong in so many iconic institutions? With reputations ruined, and trust trampled upon, will the corporate phoenix rise from the ashes? Could it have been different? We explore the lost opportunities.

Wishing you a very happy and rewarding new year.

Editor

THE YEAR THAT MIGHT HAVE BEEN

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It is that time of the year when reviewers of all descriptions and dispositions take a look at the rearview mirror and pronounce on what transpired in the preceding twelve months. Objectivity is sacrificed and personal prejudices rule the roost. We use the retrospectograh (a machine not invented) to ask ourselves "what if……..". All resemblances to persons and events are not coincidental.

Four public sector undertakings, holding 74% of the shareholding in an asset management company, are at daggers drawn with a foreign institutional investor holding 26%. The term of appointment of the Managing Director (MD) and CEO is to end in the second half of the year. While the four Indian entities are pushing for change, the foreign shareholder is insisting on a fresh term of office for the incumbent MD and CEO. Considering that time is running out and that a decision is required to be taken soon in the interest of the organisation, a meeting of the Board of Directors is called at short notice. After detailed discussions during which contrasting viewpoints are expressed on the performance of the MD and CEO and on the need for a change, it is decided in the interest of the organsation that the present MD and CEO shall continue for twelve more months in that capacity, and during the period of extension both contending parties would continue to engage in order to find a mutually acceptable solution.

The Board of Directors of a very large private sector bank receive a complaint that the spouse of the MD and CEO has a business relationship with a group, which in turn has a borrowing relationship with the bank. The complaint alleges conflict of interest and hints at the possibility of corrupt practices. The Board of Directors, in a hurriedly convened meeting, shares the letter of complaint with the MD and CEO and seeks the latter's response thereto. The CEO contests the content of the letter. Following detailed discussions, between the Board and the CEO, it is decided that the CEO shall proceed on leave for a few months and an independent outside authority will enquire into the allegations. Since institutional interest is considered paramount, the CEO agrees with the suggestion and proceeds on leave and the Board at the same time, decides on an external enquiry. It is agreed by both parties that if the enquiry leads to a favourable finding, the CEO will resume duties, and, having regard to the fact that the remaining period of the contract is only a few months, will take a decision on staying till the period of appointment is over or making an exit that might seem premature but will enhance governance standards. Accordingly, the CEO leaves and an interim CEO is appointed.

The Board of Directors of a very large insurance company decides to become a majority shareholder in a beleaguered public sector bank. It is recognized by the Board of Directors that an investment which makes the insurance company a significant (above 10%) shareholder will need the approval of the insurance regulator. During discussions, some of the Directors point out that the insurance company is primary responsible to its policyholders and that there is no pressing case for turning into a majority shareholder in a stressed public sector bank. At the same time, a view is expressed that the longstanding desire of the insurance company to have a bank of its own can be fulfilled by majority shareholding in the bank under examination. Protracted discussions ensue and there is no finality. Separately, the Board of Directors of the public sector bank decide that there is no great merit in agreeing to the insurance institution becoming the majority shareholder in place of the Government of India. It is also felt that this was not the first time that the bank or its parent institution was facing serious existential problems. On the previous occasion, it had been addressed by the creation of the Stressed Assets Stabilization Fund (SASF). A view is expressed that something similar can be attempted this time. The meeting concludes without any final decision. Simultaneously, the insurance entity files an application with the insurance regulator indicating its intention to acquire a commercial bank and seeking informal advice on whether permission is likely to be granted to acquire 51% shareholding in the bank when the limit prescribed by the regulator for such investments is 10%. The regulator responds by saying that there is no merit in such a proposal and that the insurance entity owed its duty primarily to policyholders. The regulator also advises the insurance company that if there was a felt need to become a majority shareholder in a commercial bank, the purpose will be achieved subject to regulatory approval, by increasing the shareholding in another bank where the insurance entity already held 26% of the shareholding.

A large private sector bank is informed by the banking regulator that there is a very significant divergence between the NPA figures indicated by the bank and the NPA figures determined by the regulator. This large divergence would significantly impact the finalised results which had been communicated to shareholders and other stakeholders. After the next steps are discussed at the meeting of the Board of Directors, the MD and CEO whose term is to expire in a few months, decides to go to RBI and to state that while he does not agree with the findings, he has no desire to enter into a public dispute on the subject and that if he had done anything remiss, he would be prepared to take the rap and move on. The MD and CEO makes an offer to RBI that he would step down after three months, during which period a new MD and CEO would be inducted.

The auditors of an entity, owning a leading airline, indicate their inability to certify the entity as a "going concern". The Audit Committee meets soon thereafter and engages with the auditors to identify / confirm the problem areas and to determine remedial action(s). A leading management consultancy firm is brought in to prepare a roadmap for immediate improvement. Cost cutting, wherever necessary, is resorted to. Major stakeholders, such as representative unions and associations, are brought into the conversation, so that the sincerity of the attempts being made is effectively communicated and their buy-in obtained. Exploratory efforts are made to bring in a major investor. Questionable practices that have come to the adverse notice of investigative agencies are promptly discontinued and responsibility fixed on the persons responsible therefor. Meanwhile, aviation fuel prices, a major villain of the piece hitherto, starts moving southwards.

Based on a whistleblower complaint, an Exchange, which is a first-level regulator in the securities market, discovers that some brokers by virtue of co-location with the Exchange, are privy to faster information, translating to a huge economic advantage. The senior management team immediately does a deep dive into the issue, identifies the problem and engages an expert agency to help it find a quick and effective solution. The Exchange, on its own, informs SEBI regarding the problem and the steps being taken to address it. The persons responsible and outside contributors, if any, to the problem are identified and promptly taken out of the equation. The whistleblower is suitably rewarded for his role in bringing the problem to the notice of the Exchange.

Two brothers, meet one morning, at breakfast, to discuss an emergent matter. A foreign entity to whom they sold their interest in a pharma company, has accused them of withholding vital information. They seek a meeting with the entity to iron out matters. Meanwhile, facing a cash crunch and having several commitments, they put a hospital company on the block. A transparent bidding process follows and the highest bid is accepted. The proceeds are used to meet their commitments and all litigation is avoided.

William Wordsworth, the poet laureate of yore, recalled that, lying on his couch, "in vacant or in pensive mood", his heart danced with the daffodils. Corporate historians, rewinding to 2018, will pensively remember nothing more than heartwrenching fiddles.