

# Seafarers “N”EVER GIVEN respect.

What will we do this time so that history is not repeated?



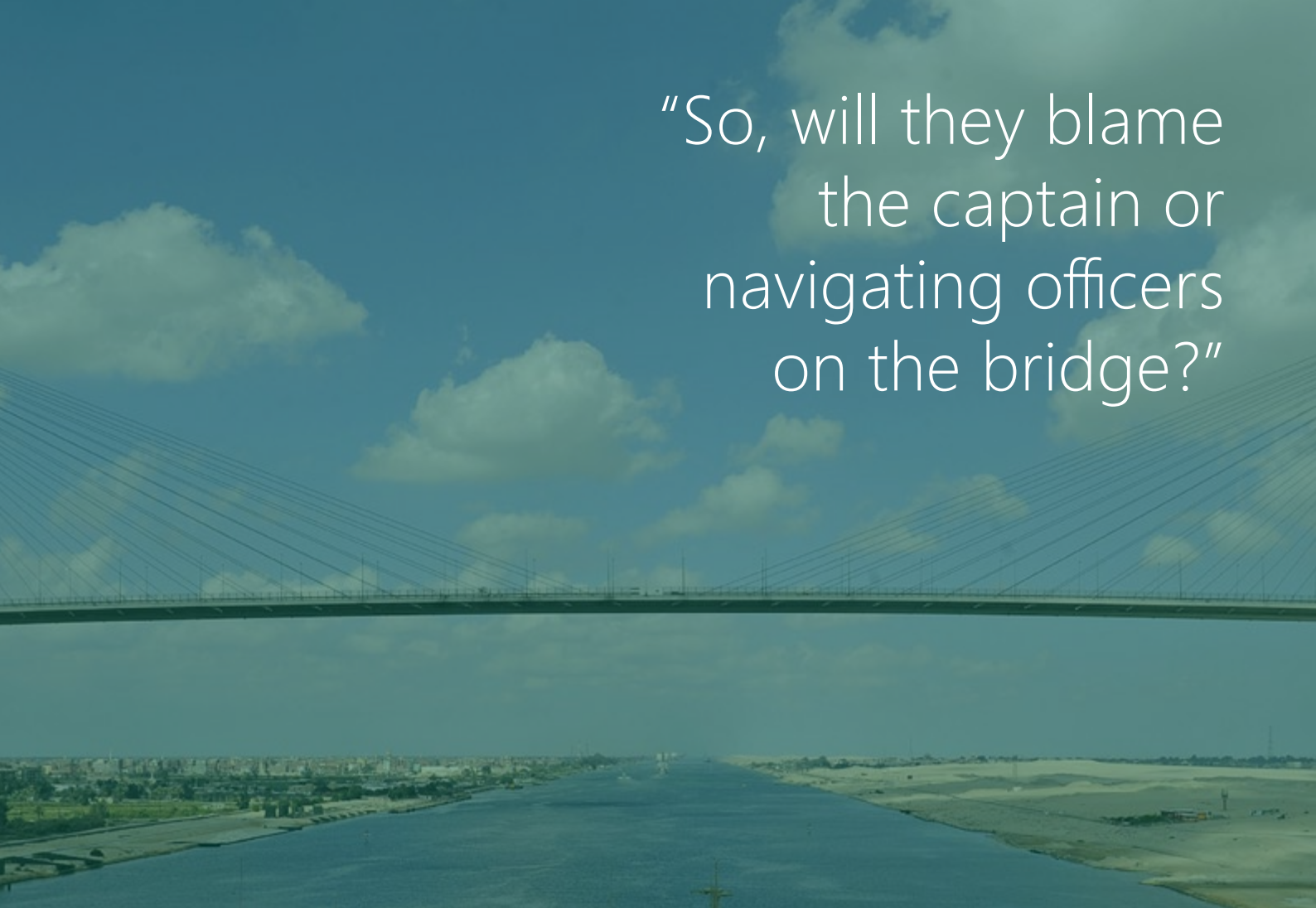
By **Capt. Zarir S. Irani**,  
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The prime mover of the world trade, shipping and the man on the wheel, the “seafarer”, is often seen with sympathy for his helplessness in supporting an unwell parent, sibling, missing family births, funerals, weddings and other important events in life; and the world silently and sheepishly calls it “part of the job”. Sailors have learnt to take that on the chin and move on with their trade and silently continue with their dedication without much grumble.

The silent suffering, ignorance and the pain, hurts below the belt when a seafarer, or a Master, or his fellow seafarer is seen in tears, being imprisoned for threat of pollution, or potential of detention and so on due to public pressure, or for quelling hue and cry to save public image. Such events make you wonder. Does he deserve to be treated like this? What was his fault? Does minor negligence or error deserve him to be branded a criminal? Sometimes in a state of depression due to loss of life on board or a serious incident, some would say “it’s a hard life at sea and we have to cope with it all”. It is not the best scenario but on the edge of extreme limits of tolerance, as I have first-hand witnessed and experienced.



However, when you are met with uncertainties, threats of arrest or delayed sign off, hostile environments, detention of your vessel or arrest due to a commercial dispute, it comes down to a relevant question being asked: “Why do I have to be the Scape Goat and do I deserve this? What kind of justice is this? Where are the “big talking



# "So, will they blame the captain or navigating officers on the bridge?"

stalwarts" preaching the Universal Directive of Human Rights when it is happening in their developed state? And at the end of it, despite the BIMCO study on the Shortage of Manpower in shipping, is it worthwhile for new lads to join, or me to continue with this profession?"

Despite the best statistics and safety culture among all transport Industries, based on tons/miles/time or cost effectiveness ratio and minimal loss of life, pollution, no damage to property, the fear psychosis of arrest, criminalisation is hounding sailors. Numerous studies have confirmed this over two decades and the author does not wish to narrate a single particular incident. It is also accepted that there are "black sheep" in the industry, who deserve to be punished; but branding the seafarer for every incident or accident, whether at sea, shore or even in canals, does not give any confidence to the seafarer or shipping business. Let's not forget that had there been no shipping, half the world would have perished of cold and the other half of hunger. The seafarer is also a human being just like people

ashore and deserves to be protected in accordance with the basic tenants of the 30 articles as enshrined in the Universal Declaration of Human rights. While the world expects the Seafarer to move the ship North to South or East to West, he has to be given his due and the **"Criminalisation of Seafarers must stop"**.

While the world is still combating the Coronavirus pandemic and the turmoil caused by it, in the maritime sector one of the world's mega container ships remained stranded for 6 days during her routine transit through the Suez Canal on 23rd March 2021. The mega carrier carrying over 20,000 containers and under pilotage grounded and blocked the canal passage. This caused a blockage resulting in delays of unimaginable proportions. Hundreds of ships had their transits blocked on both sides, reported and estimated at this stage to be causing worldwide industry billions of dollars.

Putting some numbers into perspective, the closure of the canal has been estimated to cost 9 billion dollars every day.<sup>1</sup>

The Suez Canal authorities fear 9 billion of dollars in loss of revenue and other considerable indirect expenses to get the canal in an operational state again. "The amount includes a USD \$300 million claim for salvage bonus and a US \$ 300 million claim for loss of reputation and so on".

The incident has brought in many thinkers, including policy makers to think of alternatives in future, such as another canal through Israel, or alternatives Arctic routes by Russia. However, such is the depth of the scope of churning through this issue besides the immediate cause from industry experts with respect to CLAIMS, ERROR OF NAVIGATION, PILOT/MASTER ERROR, ACT OF GOD, WEATHER CONDITION - and

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1 | Reported via <https://www.bbc.com/news/business-56533250>

even questioning the prudence of allowing such a size of vessel into the canal in view of restrictive bends. There are several questions raised by industry experts and lessons to be learnt from the six gruelling days 'Ever Given' remained aground. Many rational comments and questions have already been made such as; what exactly caused the ship to become grounded? How was it re-floated? Apportionment of blame for the crisis lies where? What will emerge as the proximate cause for insurance to consider?

These are some of the questions, which maritime experts representing respective stakeholders are still debating. Some of these will be litigated over to establish apportionment of blame or to agree upon compensation amounts. What steps will the Suez authorities take? What compensation or financial guarantee would they like the owner to provide before releasing the vessel and will the owner agree to such directives? Whatever it may be, the ship owner in particular and the maritime industry as such would like the "business as usual" attitude to prevail while the insurers, owners and lawyers come to settlement either through arbitration, or prolonged judiciary process.

So, before we react to the incident that may escalate to a point of no return, let's put some thoughts together to understand how and why one should not fall back to causa-proxima attitude and blame the ship on the age-old principle that the ship was "under the Master's order and Pilots' advice"; and it was the wrong handling, manoeuvring by the Master that caused the grounding. A simple judgement based on an age-old trend. Blame the Master, criminalise and crucify him. This is not the first time, and I am sure will not be the last time, when the verdict is out against the ship's staff before any investigation is done, whether by the state, or in accordance with the IMOs Casualty investigation Code to which well over 170 countries (including Egypt) have agreed. It is a different issue to agree and another to apply when it impacts your interests. I do not wish to dwell on the matter since it may go under sub-judice status if it has not already done so.

So, will they blame the captain or navigating officers on the bridge?

Noting the fact that the Master is an Indian citizen, and the trend was meandering towards the Master's ineffective action, wrong ship handling, incompetency and so

on, I sought views on the subject immediately from Capt. L.K. Panda, who was the Chief Examiner and Nautical Adviser to the Government of India.

Being an ex-Government servant and very cautious by nature, he gave his generic thoughts and said *"Every seafarer, including the Master, is trained and certified in accordance with the provisions under the STCW Convention 1978 as amended. The Convention in its preamble states 'The Parties to this Convention, desiring to promote safety of life at sea and the protection of the marine environment by establishing in common agreement international standards of training, certification and watch keeping for seafarers making it amply clear that the standards set in the Convention are primarily related to sea, and the training does not envisage bringing in expertise for transit through canals, nor inland waters, therefore the coastal states, ports, canals have speciallists, known to be Pilots and Harbour Masters to ensure safe transit of the vessel. The Pilots undergo special training for the purpose. To expect the seafarer to be trained and certified under the STCW Convention to match the competency of the Pilot is not*

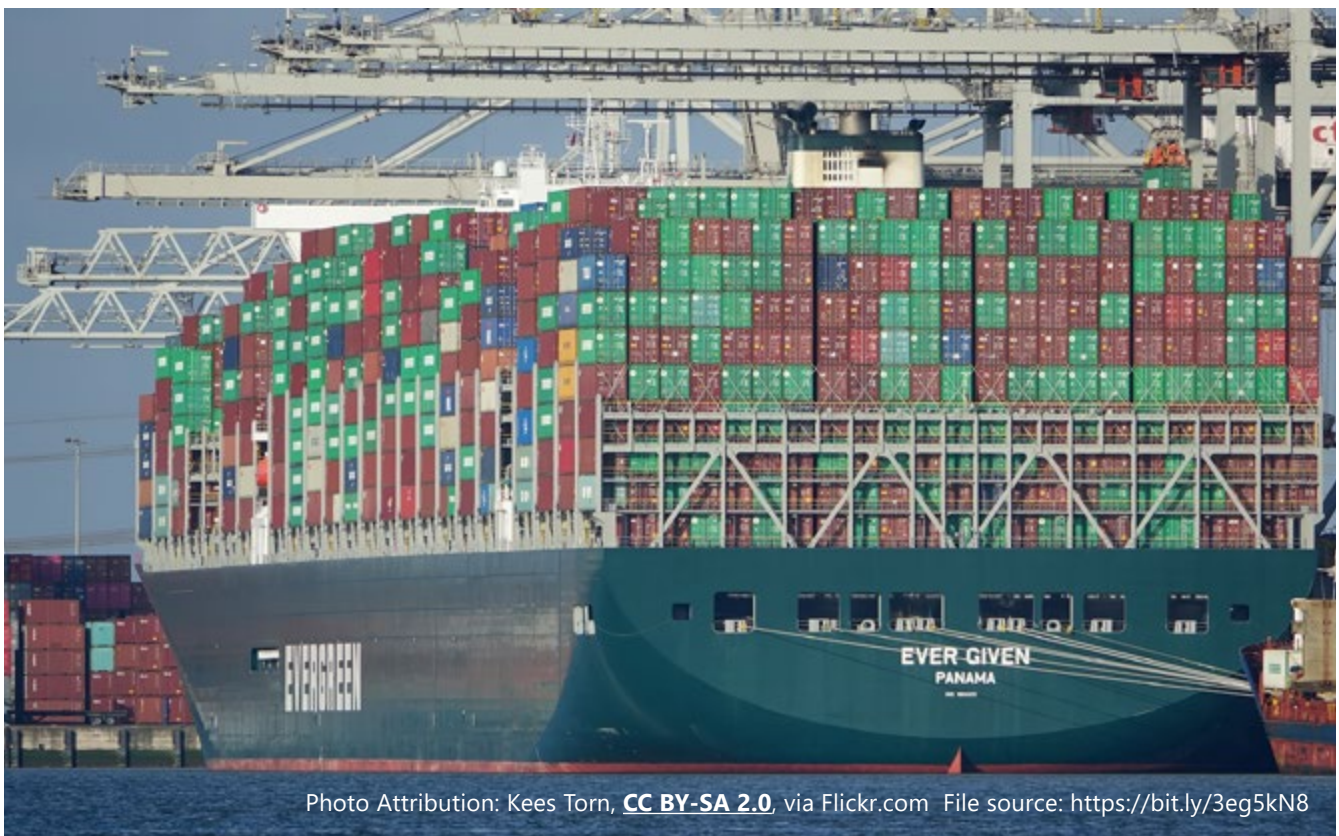


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*correct. It is also true that even if the Pilot is on board, as of now, the legal stance is that all actions or commands given by the Pilot are deemed to be advice. Every port and canal or inland authority where there is mandatory pilotage has his or her own set of legislation and the same applies during the time of the vessel's transit.*

In the absence of any concrete investigation as per IMO's casualty code, there has been much speculation. Initial inconclusive investigations suggest that the vessel while navigating in the Suez Canal veered off due to a gusty sandstorm. The strong gust caused the bow to veer off and thereafter the excessive speed, windage area coupled with bank cushion effect caused a zig-zag movement for some time prior to running aground hard from the bow and the stern swinging thereafter causing the total blockage of the channel.

There have been no reports of human injury, pollution nor cargo damage, and initial investigation has ruled out mechanical or engine failure. Hence, the primary cause can be attributed to a manoeuvring error. This leads to the usual question of what were the Master and Pilot doing?

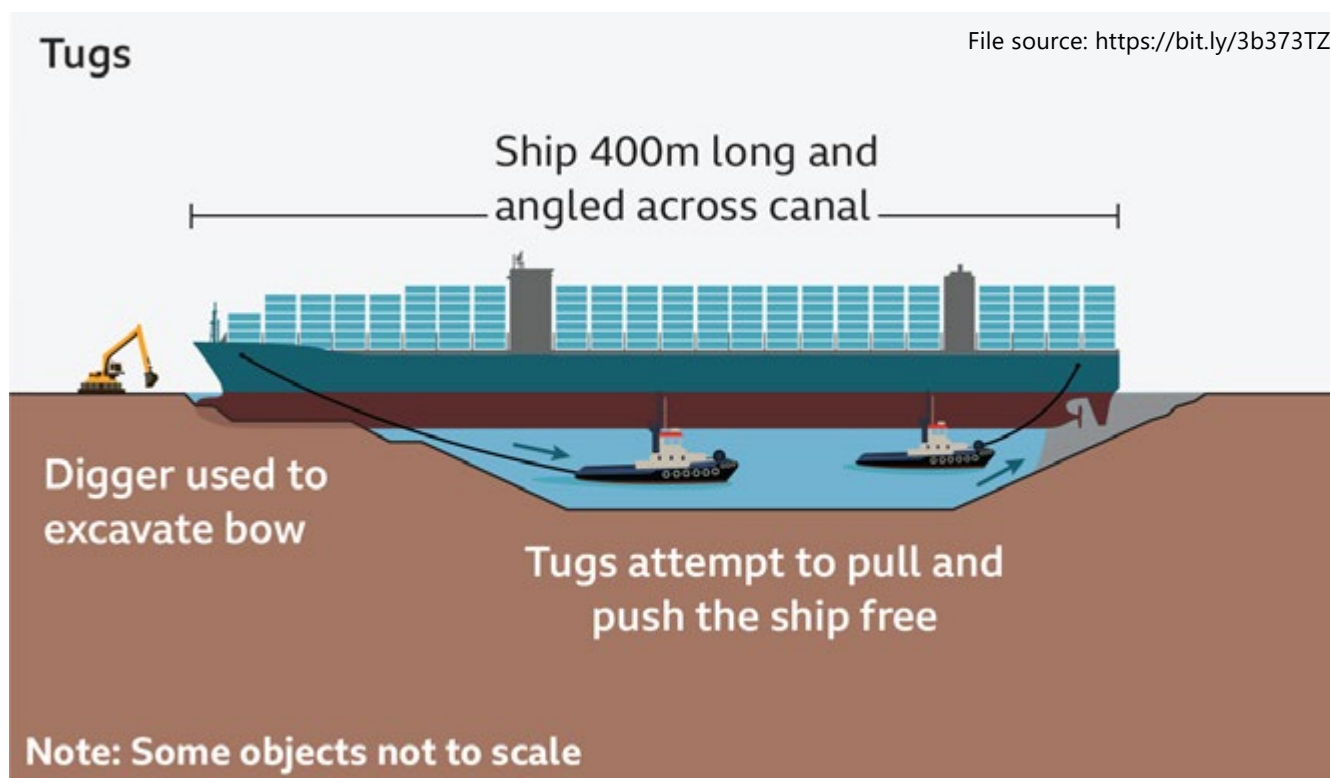
Was there a breakdown of Pilot/Master interaction? It has come to light that the Master and Pilot were not on the same wavelength and the discussion on the bridge covered various different subjects. The bridge data recorder will reveal any such discussion, which may have been the major, or prime contributing factor leading to grounding of the vessel.

Here Captain L.K. Panda raised a valid question from his decades of experience in analysing findings of similar cases on behalf of the Marine Mercantile Department of India (MMD): *"How can the Master be blamed for maneuvering errors when he has virtually no control and no dedicated training for such restricted passages" and that the local rules mandate a compulsory Pilot. One needs to ask rationally and not go by the archaic insurance rules or the so-called time-tested procedures where the Master is in total command and is the owner's representative at all times. There has been a paradigm shift in maritime trade, the management process through the ISM principles, and the role of Master. Sadly, the role of the Master, though legally and theoretically remains as in charge of vessel and the owner's representative, but the age-old principle is challenged now as in reality the control has*

*shifted more and more to shore. Within these practical realities, we have observed Masters being penalised for consequences over which they had no control, nor were they trained and made competent to execute such actions. There have numerous instances when the Master or ship's staff trained and certified under the STCW Convention have been penalised for actions, which had no linkage to the safety Conventions. The port, costal or the canal authorities, while making pilotage mandatory, cannot absolve themselves from any responsibility and carry out the function with no liability while making mandatory pilotage.*

*There has to be a paradigm shift in thinking and the responsibility has to be shared by all who deem it to be safer and not leave it to the Master or ship's staff to fend for themselves.*

*We have many landmark cases around the world where Pilots have had to share responsibility and apportionment of blame, but they have been pronounced after prolonged judiciary process unlike those Masters or ship's staff who have been taken into custody like a criminal or kept on ships under some kind of "house-arrest".*



File source: <https://bit.ly/3b373TZ>

Source: BSM, media reports

BBC

So, what are the contributing causes to this particular incident? The debate among industry experts continues depending on who wants to know the answers; the underwriters, lawyers, health and safety professionals, or those who suffered from commercial and/or reputational loss. The unprecedented slow down and bottlenecks of maritime trade has raised concerns and worry around the world about legitimate and quick recovery of their respective losses. We request professionals involved in this case to spare a thought for the Master and crew of the vessel.

The Indian Seafarer’s Association has expressed their concerns and solidarity for the seafarers. They have written to the Director General of Shipping urging him to look into the matter and ensure their safety.<sup>2</sup>

To put forth simply the quantum of responsibility on the Master’s shoulders is unimaginable. Try to think of any other professional position where a single act (or lack of) by a single person has the potential to bring the world’s supply chain to a grinding halt.

Make no mistake, even prematurely, the entire responsibility of any maritime incident now remains within the Master’s domain, irrespective of whether he/she is at fault, or otherwise. This is further compounded by the possibilities of prosecution, persecution and likely arrest, or at the least necessitating the Master to be away from his family and familiar surroundings for extended periods of time in foreign and often alien places, sometimes stretching to years as we have seen in the recent past of similar ‘commercial’ losses.

Historically, the international maritime community has approached maritime safety and investigation from a predominantly factual and technical perspective, with conventional wisdom applied to engineering and technological solutions to promote an outcome. However, in recent years maritime casualty investigations have evolved in their approach to recognize and address the role of human factors to a large degree, and to address their contributions to maritime casualties. Some question the fairness of this, as we do. But the

legal minds amongst us have their own argument about due diligence and ultimate responsibility.

Most cases are won considering the major factor being “human error” leaving the door wide open for corrective measures. This methodology encompasses aspects of competence, culture, experience, fatigue, health, situation awareness, stress and working conditions being assessed, and often provides objective and productive outcomes from maritime incident investigations. This then ends up in the apportionment of blame.

Having said that, the counterproductive factor in this, broadly speaking, categorizes human factors as acts of omission, intentional maleficence or otherwise, negligence and errors in judgements. These categorizations greatly affect the Master’s morale and can result in judgements being made and passed on his and the navigating officer’s competence and to a large extent, the safety culture.

Captain L.K. Panda, having had the privilege of being the Chief Examiner and Nautical Adviser to the Government of India says as his concluding comments, *“I am of*

2 | Reported via [www.marineinsight.com](http://www.marineinsight.com)

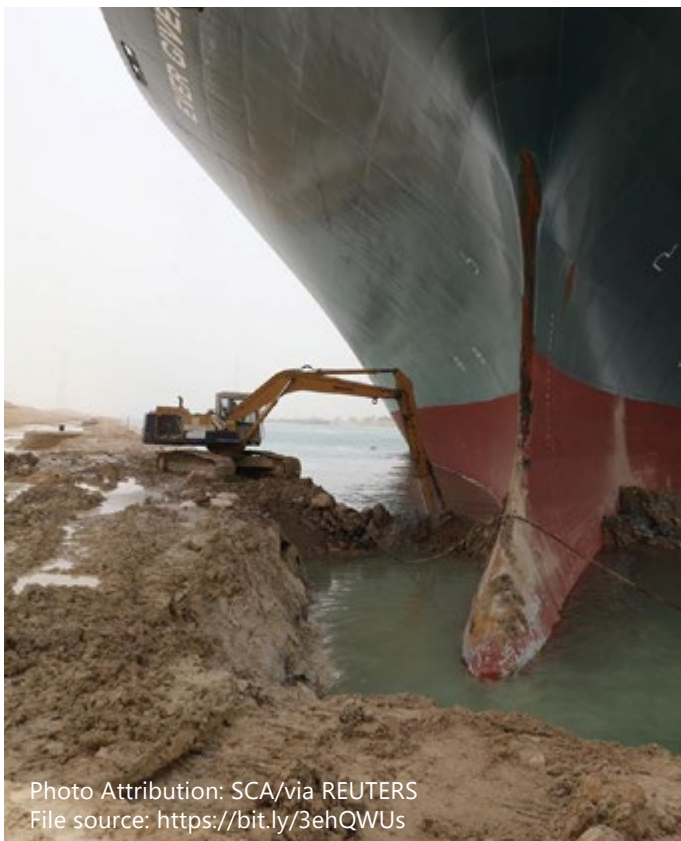
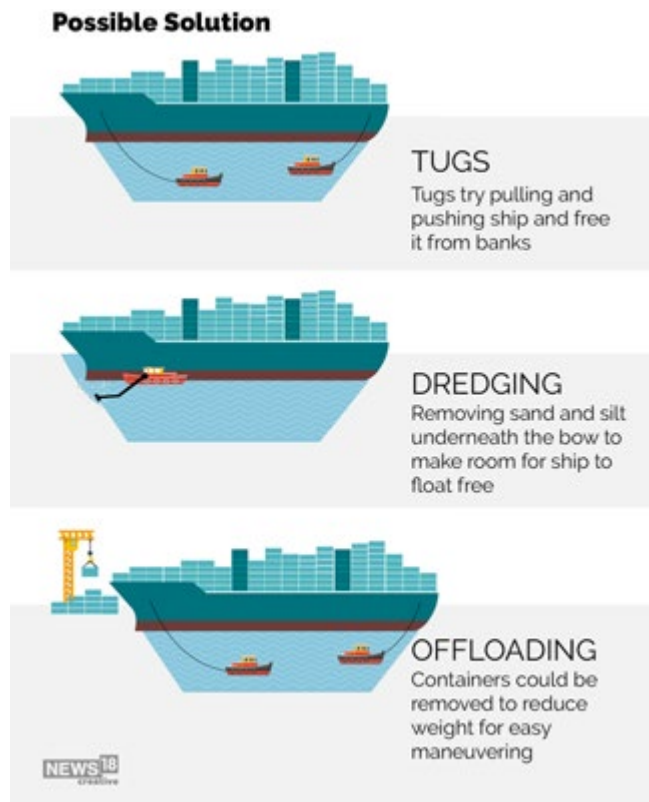


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*the opinion, we need to examine the process, share our common responsibility and improve the training process. The archaic commercial laws will have to redefine shore and ship's staff responsibility, especially about the Master and Chief Engineers. The trend to apply the local laws in case of marine incidents and convert the basic common/civil laws to criminal paradigm has to change. Regrettably, the champion states of Human Rights have a history of violating the basic principles of Universal Declaration of Human Rights (UDHR) 30 Article when it comes to seafarers. Several incidences of recent oil pollution have brought out the darker side and the sincerity in application of the UDHRs articles, especially the provisions under article 9.*

*Most of the marine casualties at sea or in and around the restricted waters have a 'human error' component in it. In the current case, where the vessel was under effective charge of a Pilot under mandatory pilotage, the scope under "human error" goes far beyond the ship's crew or the Master and has to take into account the services provided by Pilots and even the shore/traffic monitoring stations."*

*And with his humour Captain Panda asks, "Who will they blame when they have autonomous ships?"*

#### ANALYTICAL THOUGHT:

Let's understand that even if a Master has assumed to have created an error of judgement and has been the central point of this navigational error coupled with weather elements, are we in any position to point fingers at his incompetence, his professional integrity, or to an extent criminalize him?

Can we expect a Captain to have the courage of his convictions to instantly react to a corrective action of the bow of his vessel being caught in a gust of wind when incremental and immediate reaction is expected to steer her to safety and avoid a disaster of this scale? Why should a fellow mariner be in a compromising position or even having been looked at with raised eyebrows for commercial losses, which are largely insured against? Is it fair?

This is what we want this article to be pondered upon and thought about, in the sense of where we stand in harmony and complete solidarity as merchant marine navigating officers in charge of watch keeping, or the command of vessels.

This article is written with a humble and genuine request towards those who have the capacity and are in a position to protect the Master's personal and professional interest, to be standing by him and to do what it takes to save the matter from being

steered into a dangerous blame game. I feel it has the potential of being taken in this direction for no other motive other than finding a "scapegoat" for this unfortunate accident.

In my independent view it is an accident (yes it happens to a big one) of international and multi-dimensional commercial losses only. I would stand in solidarity with the Master and the crew of the 'Ever Given' to let them know that they have done what they could to safely negotiate the narrow passage of the Suez Canal. We have all the respect and the admiration for the courage and their professionalism in the difficult situation they have found themselves in.

So, in conclusion, if you are a fellow Master Mariner or a seafarer, please take a moment to empathise with the Master of the 'Ever Given' and avoid passing unjust and unsubstantiated judgements over self-appointed platforms as normally occurs following incidents of this kind.

I hope that going forward, the Master and crew are investigated in a manner enabling dignity and basic Human Rights and appropriate legal representation, including mental well-being accorded where necessary.

I conclude with faith in fair assessment and hope the professional pride of seafarers remains upheld.

#### ABOUT THE AUTHOR

Capt Zarir Irani is an experienced marine surveyor and prominent 'claims and casualty investigator' who has an admiration and respect for the maritime community. He has successfully concluded more than 22,300 nominations, many of them internationally acclaimed in the 30+ years he has been involved in the maritime profession having started as a teenage cadet on global tramping vessels. He is invited by international media to comment independently on the first response of 'global maritime disasters', some of which can be viewed on his YouTube channel at: <https://www.youtube.com/user/izarir/videos>.

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*The views and opinions expressed in this article are those of the author solely and are not necessarily shared by the International Institute of Marine Surveying.*