The Witch-Hunt against First Global

Implications for Free Press in India

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Courtesy: The Hindustan Times

Shankar Sharma being produced in Patiala House court

Until March 13, 2001, First Global (FG) was one of the most reputed and top Indian brokerage and investment banking companies in Asia. It was set up by Shankar Sharma and Devina Mehra – both young, first generation entrepreneurs and top rankers from management institutes. It paid more taxes than companies like Proctor and Gamble, Ranbaxy, and Titan; and was the only Asian company (ex-Japan) to be a member of the London Stock Exchange – a privilege granted to a company only after it has been put through a stringent evaluation of its compliance with international rules. As a venture capitalist, First Global also had a small investment – only 14.5 percent shares - in a year-old media company: Buffalo Networks, which owns *Tehelka.com*, one among several other investments it had made.

After *Tehelka* went public with Operation Westend On March 13, nailing entrenched corruption in defence deals, a high-security arena of great national importance, instead of punishing the guilty, the government accused *Tehelka* and First Global of a massive conspiracy to crash the stock market and destabilise the NDA government.

Since then, First Global (FG), which had virtually *no* tax or legal infringement in ten years of doing business, has suddenly been hounded out of business. All its offices have been shut. Shankar and Devina have been forbidden to trade; their travel overseas has been banned, their properties have been attached, their bank accounts have been sealed. They have been served over 200 personal summons; raided 25 times; and physically detained thrice. They have been banned from trading and forbidden to travel overseas on the specious count that they *might* evade a tax liability that *might* come up at some future date. Their accounts have been frozen without even a legal case being made, under the Reserve Bank of India's wide-reaching powers to issue 'any directives' to banks.

All of this without a single charge sheet or tax demand - leave alone conviction for wrong doing.

Shankar Sharma was arrested, and, in a disproportionate response to a charge trumped up by the Enforcement Directorate(ED), he was imprisoned in Tihar jail without bail for over ten weeks under a law that was repealed over 18 months ago by parliament, precisely because it was draconian and prone to this kind of misuse.

What this has done is send out a clear message both to the press and the business community never to cross or question the government. It has also effectively cut off *Tehelka's* financial lifeline. No investor, no matter how interested, is ready to risk the harassment and witch-hunt that Shankar Sharma and Devina have been put through.

Both *Tehelka* and First Global maintain that FG has never had *any* say or knowledge of *Tehelka's* editorial content or policies in all the time that it has been its angel investor. They were never informed or kept in the picture about *any* stories or investigations that *Tehelka* worked on**.** Operation Westend was a story driven by a purely journalistic motive and Shankar and Devina knew nothing about it till the morning of March 13, 2001, when *Tehelka* editor-in-chief Tarun J Tejpal called to tell them that they were going to go public that day with a major expose. In fact, barring a select few, no one even in *Tehelka* knew about the story.

But there's no need to believe in assertions. Here are the facts:

Why Markets Crashed

- Finance Minister Yashwant Sinha announced his Budget on February 28, 2001.
- The euphoria over the Budget evaporated in less than two days. The market fell sharply by 176 points on March 2. Main reason: With technology stocks taking a dive across the world, foreign institutional investors (FIIs) went on a 'sell' drive.
- On March 3, a shaken Finance Minister ordered an investigation into the market collapse.
- Scores of companies came under scrutiny: RK Damani, President of BSE; Ketan Parekh and other entities; Nirmal Bang; Morgan Stanley; CSFB (Credit Suisse First Boston); Ajay Kayan; Babulal Bagri (BLB group) - to name just a few. First Global, a major player in the market, was one among them.
- On March 13, *Tehelka* went public with Operation Westend. After an initial dip when the story broke – a routine occurrence following any major story - the market rallied on March 14, and kept climbing till March 23, when the Madhavpura Mercantile Bank-Ketan Parekh scandal broke. (FII investments in fact doubled during this 10-day period and the market gained Rs 60,000 crore).
- On March 14, however, *The Economic Times* Delhi bureau filed what looked like a planted story headlined 'First Global's Broking Licence in Danger'. This was before SEBI had even started analysing the data submitted by various entities.
- On March 15, Mamata Banerjee and her nine MPs quit the NDA in protest against George Fernandes' refusal to resign. Under pressure, Defence Minister George Fernandes and Samata Party president, Jaya Jaitley resigned from their posts. Jaitley threatened to file a defamation case against *Tehelka* and fight the "dubious means" that had been used to expose her.
- On March 16, PM Vajpayee addressed the nation and called Operation Westend a "wake-up call." He said: "What had come into view went beyond security. The ease with which persons posing as arms merchants gained access to our defence personnel and politicians showed how far the cancer has spread." At that point, Vajpayee asserted that he would "clean up the dirt that has come into view…and pursue every lead in the tapes."
- On March 23, the Madhavpura Mercantile Bank-Ketan Parekh scam broke. The CBI said the amount involved in the pay order scam could exceed Rs 800 crore.
- Ketan Parekh was arrested on March 30. The Sensex plunged by 168 points to a 22-month low on April 2, the first day of trading after the Big Bull's arrest – indicating the impact of his arrest on the market.
- This downward trend triggered by the Ketan Parekh scam continued. By April 12, the country's investors had lost Rs 2,00,000 crore, or a third of their collective wealth since the Budget. This drop in the market was amplified when FIIs began to exit en masse from the Indian market, faced by daily revelations of the state of rot in the country's stock markets. The rupee also hit a historic low, closing at Rs 46.87/90.
- April 27, 2001, was again declared a Black Friday. Investors lost Rs 25,000 crore. This drop was triggered by broker panic when SEBI announced that the system of '*badla*' would be scrapped. By now rumours of insider trading and a looming Unit Trust of India (UTI) scam had also begun to do the rounds.
- In the third week of April, two PILs (public interest litigations) filed in the Calcutta and Orissa High Courts based on the *Tehelka* tapes were due for hearing. On April 18, Neerja Choudhury of *The Indian Express* reported that the government wanted the CBI to initiate a preliminary inquiry

into the matter based on the *Tehelka* tapes to pre-empt the PIL hearings. Fernandes apparently threatened to withdraw Samata Party support from the NDA. An already beleaguered government gave in and shelved the idea of a CBI inquiry. (Fernandes later denied that he had threatened to withdraw support; Neerja, however, stood by her story.)

Acccused Turn Judges

It is against this milieu of political and economic instability caused by factors other than Operation Westend that the government thought it fit to accuse *Tehelka* and First Global of a "market conspiracy." George Fernandes also variously called it an ISI plot; an Opposition ploy; and an operation masterminded by angry arms dealers!

1n August 2001, the Government of India filed an affidavit with the Venkataswami Commission charging First Global and *Tehelka* with conspiring to bring down the market. The affidavit was so patently baseless that the Commission told the government there was nothing in the affidavit that pointed to a conspiracy and gave it till October 8, to file other material or withdraw the affidavit. The government responded with further baseless affidavits but no proof.

Phoney Conspiracy Theory

There are reasons why it cannot put together a credible charge:

- The stock market went up post *Tehelka* expose: For one, Operation Westend is retrospectively being blamed for a market drop and instability that happened on March 2 – 11 days before it was made public and could have an impact on any market! It is important to remember also here that the market actually rallied after Operation Westend and was positive till March 23 - when the Madhavpura scandal and a series of other scams and global melt downs unrelated to Operation Westend started to break.

Courtesy: The Hindustan Times

Devina Mehra : After an appearance in court

- **First Global was a net buyer prior to the expose:** Second, First Global is being accused of creating panic in the market by selling stocks in anticipation of *Tehelka's* newsbreak. Contrary to the government's accusation, First Global was a net buyer – not a seller – of stocks worth Rs 37 crore in the period between the Union Budget and the expose. Even SEBI has not contested this fact. On the three crucial days, February 28-March 2, 2001, FG was a net buyer as per the government's own data which prima facie puts FG in a position opposite to the government's allegations! Further, as per the government's own affidavit, First Global was a net buyer for the whole quarter, January to March 2001, as also for the full financial year April 2000 – March 2001. (See 'Proof of SEBI'S Mala Fide Intent' below).
- **No evidence of prior knowledge of expose:** First Global has been under intense scrutiny by a hostile government for over 10 months. All electronic correspondence and other communication between FG and *Tehelka* has been dug up and seized by the government. In all that, not a *scrap* of evidence – no emails, no story lists, no papers – have been discovered to prove First Global and *Tehelka* were ever in touch, either regularly or specifically, about any story or editorial content, leave alone Operation Westend. First Global, in fact, was so disinterested, it never even attended *Tehelka's* Board meetings.
- The only reports FG ever received from *Tehelka* were routine and periodic financial statements. This is standard practice for any Venture Capital Investor – a means to make sure that funds given are not being frittered away on useless things like irrelevant foreign travel or unnecessary entertainment. Even investors in listed companies holding very low stakes get annual reports.
- **First Global was in the process of exiting its investment in *Tehelka*:** Far from masterminding a long-term plan to manipulate the market through any story *Tehelka* might do, First Global was seeking to *disinvest* and *exit* from *Tehelka* as far back as September 2000 – six months before Operation Westend was made public. The government itself has detailed proof of this intent.

(It can also be independently verified by making a few calls or checking records of correspondence and meetings with several potential strategic investors - Star TV, ZEE Telefilms, Sony TV, Kerry Packer Group – who had been contacted to invest in *Tehelka*. FG had also contacted reputed Venture Capital Investors like Goldman Sachs, ICICI, Citibank, Warburg Pincus, Taib Bank etc to invest in *Tehelka*. The government itself has attached e-mails that prove this with its affidavit.)

● A month before Operation Westend, around mid-February 2001, *Tehelka* and Zee Telefilms shook hands on a second round of dilution. With this investment, Zee would have *bought out* First Global's stakes in *Tehelka*. The deal fell through under pressure after Operation Westend broke in March.

● **Government's allegations of fiscal motives:** *Tehelka's* founding partners – Tarun J Tejpal, Aniruddha Bahal and Minty Tejpal – do not own a single share in any listed company except their own. None of them has ever bought or sold shares or even written about the stock markets in their long careers as journalists – they could have *no* interest in manipulating the market.

● Far from being a *benami* company set up by FG to destabilise the NDA alliance, as the government contends, *Tehelka* was incorporated as an independent media company in keeping with the strictest rules and regulations. First Global was not even present when *Tehelka* was conceived. In fact, its initial valuation was done by Ambit Finance, a merchant banking company owned and promoted by Ashok Wadhwa, in February 2000. FG subsequently invested the seed capital, thereby acquiring 14.5 per cent of *Tehelka's* shares based on Ambit's valuation.

● Operation Westend is only *one* story done by *Tehelka*. This news and views magazine does an average of 20-25 stories a day on current affairs, politics, society, books, art and entertainment. In June 2000, it had done 'Fallen Heroes' - a sting investigation into match-fixing in Indian cricket which had a far-reaching impact. It also won the first Media Brief Award for Best Investigative Story of the Year for Operation Whitewash, an investigative series that revealed that the army was fudging about Pt 5353 after the Kargil war. It is ridiculous to suggest that *Tehelka* was set up with the one-point programme of crashing the markets in the distant future, or that Operation Westend was undertaken for this.

Govt's Malafide Intent

As mentioned earlier, in the 10 years of its life, First Global has had virtually *no* tax or legal infringement. None of the other companies that were initially under scrutiny for the market crash have been subjected to the same prolonged harassment without proof. Entities like Ketan Parekh have been indicted. Others on whom nothing was found - like Ajay Kayan - have been cleared. First Global, though, continues to be harassed to this day – even after nearly a year of intense scrutiny by every arm of a hostile government has not proved anything.

SEBI (Securities and Exchange Board of India) was only supposed to investigate the post-Budget crash. Given that First Global was a *buyer* for that period, there was no case to pursue against them in the first place.

● Interestingly, too, SEBI itself had granted FG three new licences between April 2000 and January 2001 – including a coveted FII licence. FG was one of only 4-5 firms that got it in January 2001**.** Since *Tehelka's* expose, however the story is starkly different.

SEBI's Malafide Intent

● On April 19, 2001, SEBI debarred First Global from conducting business under Section 11b of the SEBI Act. This is a section meant to be used in emergencies to stabilise markets. The emergency was presumably the post-Budget market crash.

● FG asserts it was a net *buyer* of Rs 37 crore in the period between the Union Budget and the expose. These figures on the BSE and NSE can be independently checked. SEBI also has the complete transaction details from the stock exchanges, but has refused to reveal it. The implication is that it cannot do so without completely falsifying its own accusation.

Selective viewing: For one, in its report, SEBI has attached selective data to try and prove its position. It has used data relating to five minutes of specific trading sessions to show FG was a seller at that instant. A normal trading day starts at 10 am and ends at 4 p.m. – what was FG doing in the remaining 6 hours of the sessions? How does data on five minutes out of six hours of trading prove anything?

SEBI's Falsehoods

What is more amazing is that even in the selective evidence provided by SEBI, it has called FG a seller when it was a buyer. For example: It has accused FG of selling Rs 6 lakh shares (Rs 6,08,474, to be exact) of Satyam at an average price of Rs 300 when the Stock Exchange records actually show that they bought the stock.

Similarly, for the entire month from mid-February to mid-March 2001 that SEBI has been analysing, First

Global was a net buyer on 11 trading days and a net seller for the balance of 11 days. Cumulatively, it bought Rs 18 crore of stock, but SEBI has called it a "consistent pattern of selling." This is equivalent to reading a balance sheet and calling sales purchases and expenses profits!

This mala fide contradiction can be easily and independently verified by a simple litmus test: Withhold the names of the brokers and ask an ordinary cost accountant to read the transaction details.

Impossible Charges

SEBI has also accused FG of negative exposure limits or 'exceeding exposure limits'. This is a *physical* and *technical* impossibility because: a) trading is controlled by a centralised computer system which would not allow such a transaction to be honoured, b) it would definitely affect and show up in other transactions of other companies as well, and c) it *physically* cannot occur unless there was a systemic screw-up of frightening dimensions.

Basically, in lay person's terms, SEBI's accusation is as ridiculous as and parallel to saying a person of middle income repeatedly issues a cheque of Rs 25 crore and a bank clears and honours it each time. At least a bank manager can use personal discretion to clear such a cheque, a computer would definitely reject it; the cheque would bounce and the person issuing the cheque would know he had exceeded his limits!

- Given all this, when FG challenged SEBI's 11b order in Bombay High Court, the court directed SEBI to convert the executive order into a show-cause, giving FG a chance to defend itself and present its case. At this point, SEBI tried to dismiss its misreading of the transaction sheet as a "minuscule typographical error"!

10 Months to Investigate 3 Days of Trading!

- In early May, FG submitted its side of the story, but SEBI reaffirmed its ban order. First Global then went to the Securities Appellate Tribunal (SAT) which issued an interim order saying that 'First Global has, no doubt, made a very good, prima facie case in its favour'.
- After 3 months of hearing, at the final order stage, SEBI was still unable to establish wrong-doing – though it had to investigate only *two* days of trading between February 28 and March 2 to establish guilt. Yet, on September 19, SAT ruled that it would not comment on the merits of the case and SEBI should get another ten weeks to investigate FG's role! In all this time, FG's business continued to be suspended. At this point, though, the order categorically stated that if the SEBI inquiry was not completed within ten weeks, First Global's business must restart.
- But, after ten weeks, SEBI went back to the Tribunal and got an extension of five weeks.
- When those five weeks were over, SEBI went back again to the tribunal and got another extension. We are now talking of over 10 months of investigations to analyse three days of trading. In all this time, First Global's business has been forced to remain shut 'pending investigation'.
- It is interesting to note here that the Securities Appellate Tribunal comes under the Ministry of Law and Justice, and the Ministry of Finance pays its bills.

No Undisclosed Asset Found

Quite apart from SEBI, since March 13 and the *Tehelka* expose, First Global has been subjected to roving investigations by the IT (Income Tax), the ED (Enforcement Directorate), the Excise Department (I), the Department of Company Affairs and the RBI. The IT alone has conducted over 15 raids since

March. They have not found *one* instance of undisclosed assets. Still all the properties of Shankar and Devina have been attached and their accounts frozen. The only two seizures have been jewellery worth about Rs. 1.5 lakh paid for by cheque and reflected on Devina's personal balance sheet, and Shankar's personal laptop, again declared in the company's balance sheet.

Fabricated Charges and Unlawful Detention

On April 19, 2001, Shankar Sharma was arrested on a fabricated charge of threatening an IT officer. The magistrate who granted bail passed a strong stricture against the police and the complainant for abusing power.

On September 25, 2001, IT officials physically prevented Shankar and Devina from travelling to London. They were detained and harassed for over 40 hours at Chennai airport. Since then they have been barred from travelling overseas on the specious pretext that they *might* not pay any future tax liability that *might* come up!

- The order restricting their travel was passed two days after they were detained in Chennai – clearly showing that the detention was completely mala fide and illegal.

As a background to this, it must be pointed out that Shankar and Devina were in the US at the time of the first IT raids on March 23, 2001. They came back within 2-3 days in order to cooperate with the authorities. They again travelled abroad in June-July 2001. There was no question of their attempting to flee the country, as the government's misinformation machinery would have it.

- In November 2001, the IT department attached Shankar and

Devina's properties - two flats in Mumbai and Delhi, and their Stock Exchange memberships. Assessment proceedings had not even commenced against them and there were no outstanding tax demands. In fact the tax department owed FG tax refunds!

(It is worth reiterating here again that Shankar and Devina are among the top 25 tax payers in the country.) Even though no chargesheet has been filed, FG's accounts have been frozen by the Enforcement Directorate for the period it is under investigation – which could be indefinite. This has been done under RBI's omnibus powers to issue directives to banks.

Draconian Powers

This is one of the most effective ways of muzzling the business community. Various government agencies have discretionary powers to freeze a company's accounts indefinitely and without framing charges pending an investigation. By bringing this into effect – apart from all the other harassment - the government has sent out a chilling message: even if you have done no wrong it can paralyse you indefinitely. In most other civilized countries, this kind of discretionary power without accountability does not exist. Neither does anything equivalent to SEBI's 11b power to ban anyone in the securities business indefinitely.

- Despite SEBI's bans and the investigation against them, FG still has its NASDAQ and LSE trading cards. Neither the Securities Exchange Commission in the US or its British equivalent has chosen to disqualify them. In fact, it is important to note that their NASDAQ membership was granted to them several months after the ban by SEBI. The US regulators went through the case in detail and found nothing against First Global.

FG Made Scapegoat

In all these raids, a disproportionate number of questions were directed at FG's connection with *Tehelka*. For instance:

- On March 27, 2001, an official from SEBI, Delhi landed up (even though SEBI is headquartered in Mumbai) and started to question FG in Mumbai about their *Tehelka* investment. SEBI's jurisdiction is over listed equities and not private investments. ⇨On April 3, 2001, SEBI recorded FG's statement. Again, a disproportionate part of the questions related to *Tehelka* – balance sheets, valuation, why FG invested in *Tehelka*, shareholding agreements, correspondence – none of which is relevant to SEBI. Acting within its brief, SEBI should only have asked to see FG's trading patterns just prior to the release of the tapes. In the event, it did not even ask any questions about FG's other venture capital investments.
- Up to April 17, 2001, IT officials repeatedly questioned FG with a marked emphasis on *Tehelka* – for FG, a minor private investment. All correspondence with *Tehelka* was seized. Correspondence relating to any other investments was not taken. Officials openly admitted that their order from Delhi was to nail FG for its connection with *Tehelka*.

Alleged FERA Violation

The Enforcement Directorate has charged FG with two allegations that they say amount to violations of the Foreign Exchange Regulation Act (FERA):

1) It has accused FG of selling HFCL (Himachal Futuristic) shares to FIIs without permission from the Reserve Bank of India (RBI)
2) It has accused FG of selling these shares at a price of Rs 1,060 in a private placement when the price quoted on the market was Rs 1800/ 2000. They allege that FG took the difference in price in dollars out of the country.

- Three questions arise from this: Was there any violation? Is there any proof of it? Is there anything suspicious about the timing and modus operandi of the ED's charges and arrest, or is it a fair and routine investigation?
- First, the question of timing: FG sold the HFCL shares in March 2000. FERA was repealed in June 2000 and replaced by Foreign Exchange Monitoring Act (FEMA), a law much more in keeping with the spirit of liberalisation and globalising the Indian economy. FEMA has no provisions for criminal prosecution or arrest. It deals with all violations with only monetary penalties.

The transaction details were available with the authorities for 22 months. If RBI, SEBI and ED suspected violations, why did they not act upon it for almost two years? This question is key because the transaction was reported in detail to SEBI and RBI (the very agency from which approval was supposedly required) on the day the contract notes were issued in early March 2000 — weeks before the transaction was actually settled. There were no objections or even questions from the RBI or any other agency in the intervening 20-odd months. Even now, the details of the transaction the government is relying on are exactly what were reported to the RBI in March 2000.

So, why *start* this investigation only after the *Tehelka* expose?

In fact, the alleged contravention the ED is investigating FG for was only mentioned for the first time in the remand application that was filed *after* Sharma's arrest.

- Secondly, section 39 of FEMA does include a 'sunset clause' that allows any investigation of a FERA violation *already* underway to be concluded until June 2002. Therefore the government can argue that it is within the letter of the law to invoke FERA to prosecute Shankar Sharma.

But the key questions here are: While it is true that the HFCL deal was struck three months before FERA was repealed, had the government's regulatory bodies already started an investigation? The answer is *no*. According to their own records, there were no references regarding First Global till the end of October 2001 – nearly 16 months after the repeal of FERA.

The arrest of Shankar Sharma is probably the only arrest under FERA where no case reference was made prior to the repeal of the Act. Do they have *proof* of a misdemeanour committed by First Global on this deal? The answer is no.

Arrest and Prolonged Custody

- This brings up the crucial issue of Sharma's arrest and imprisonment without bail in Tihar Jail. There are several issues here that point towards a motivated and political witch-hunt:
- Harish Salve, the Solicitor General of India, personally argued the case against Sharma's bail application. The Solicitor General's presence at an ordinary bail hearing sent out a clear message of the government's interest and position on Sharma's arrest.
- In the absence of proof of any violation (despite ten months of intense scrutiny), the High Court - with the Solicitor General of India arguing against Sharma - had ruled that Sharma's imprisonment in Tihar Jail was a 'custodial detention' to help the on-going investigation. This means that the Court admitted that Shankar was kept in jail to prevent him from tampering with evidence or from absconding. Given that he and his company have already been under a draconian investigation for more than ten months during which all their papers, documents, correspondence, and even personal laptops have been seized, it was impossible for him to have 'tampered' with any evidence. The evidence is also independently verifiable from the RBI, SEBI, FIIs, custodians and banks – none of who are likely to be influenced by Sharma. Secondly, since he is already forbidden to travel overseas it is hardly likely that he will abscond. He is currently released on bail but there is no saying when he might be arrested again.

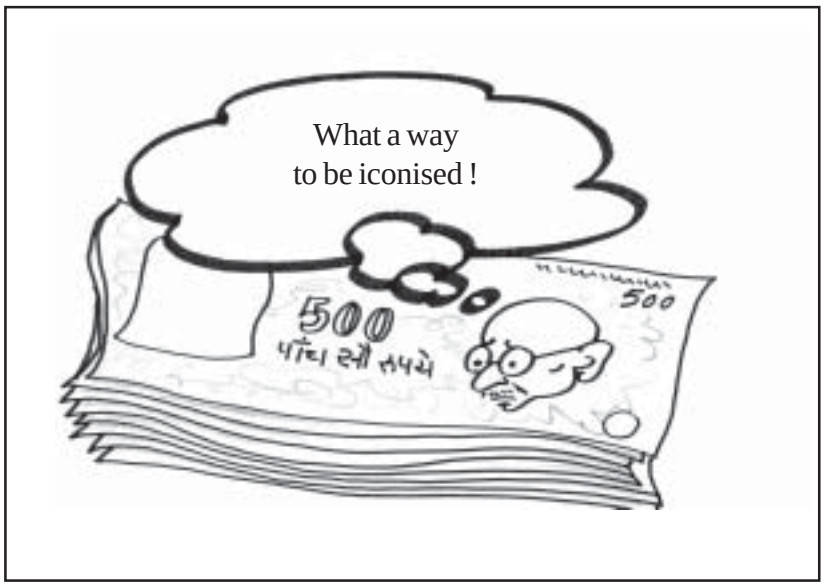
Bogey of FERA Violation

- Now the question: was there a FERA violation? It seems not. The Exchange Control manual of the RBI

lists general directions granted by the RBI. One of these is that the RBI grants "general permission" to authorised FIIs registered with the SEBI to purchase any Indian shares - listed or unlisted - in primary or secondary markets without further approvals from the RBI. Under this provision, a stockbroker like First Global only needs to check that the FII has a valid registration number (signifying RBI and SEBI approval) before transacting. The general permission for FIIs to buy shares in India would be meaningless unless it covered a general permission for the seller to sell to them. Any other interpretation would mean that all transaction by FIIs on the Indian market (which run into billions of orders) would be in violation of the law.

- Secondly, as far as the charge of First Global receiving the difference in price goes, ED has not produced any evidence of this having been the case. In this case, the share transaction is part of a preferential issue or private placement by a company. What this means is that, ordinarily under the Company Act, when the Board of Directors of a company issues new shares, they have to be given to new shareholders in proportion to existing shares. But, under Section 81 of the Act, if the body of shareholders so decides, the new shares can be issued under a private placement for which price bids from interested parties are invited. The SEBI has guidelines like a minimum price for such placements.

In this case, the minimum price fixed by the SEBI *below* which the share could not be sold was around Rs 400. The price of the HFCL shares in this deal was fixed at Rs 1,050 (by the Board of Directors of HFCL) – much above this minimum. All the bidders – including Indian financial institutions and reputed Foreign Institutional Investors (FIIs) – Finance Minister Yashwant Sinha's daughter-in-law is among them – got it at this price. Therefore FG did nothing illegal, and the charge that FG tried to make money by selling shares at a lower price than that listed on the market and taking the difference elsewhere is a specious one. By inference, the government is accusing some of the largest institutions in the world of money laundering.



- There is another bone of contention. Some major FIIs refuse to take part in direct placements. They are *mandated* to always operate on something called the DVP (or delivery versus payment) route. This is permissible by SEBI, which is the market regulator. In lay man's terms, what this means is that FIIs do not make payments unless they get delivery of the shares.

In fact, the FIIs who insist on DVP settlement are the most stringently regulated in the world – they typically manage US and UK Pension Funds money and are not allowed to take additional risks in countries like India. Since there is a lag of a few days before the actual delivery of the shares in the Indian market, the usual course of action is for the FIIs to make a bid on a DVP basis and make use of intermediaries who facilitate the transaction by paying money up-front to the company for allotment. When the shares are delivered, they are transferred (or forwarded) to the FIIs at a small extra cost to cover the transaction costs.

FG's International Standing

One of the reasons why Shankar Sharma's arrest is so suspect is because the ED and SEBI are now questioning what was a straightforward DVP trade. All the FIIs who were part of this deal – all of them with unimpeachable international standing – have sent letters and records stating that they bought the HFCL shares at around Rs 1,060 at the same base price of Rs 1,050 plus the brokerage/transaction costs. They have also sent records that show them to be legitimate taxpayers in India. (None of these funds route their investments through tax havens; they pay full tax in India and are stringently regulated in

their home countries – the US and UK). In addition, they have sent signed statements saying that if they sell these shares bought in a private placement in the open market they will routinely pay taxes on the difference. All of the players seem well within their legal rights.

- It is important to stress here that the only way First Global could have received the difference of approximately Rs. 56 crore abroad, as alleged by the ED, would be if these FIIs had paid it to First Global. Thus the ED is accusing four of the internally most reputed and regulated funds of money laundering. These include two of the top five funds in the world – Putnam and Amvescorp-Invesco. This kind of wild allegations can severely dent FDI and portfolio flows into India.

A Vulnerable Target

Just by virtue of being a broker and a venture capitalist, Shankar Sharma is a vulnerable target. The average person would find it hard to believe that he – or indeed any player in the stock market - has not done anything that violates the law in their careers. Given the draconian investigation and misinformation campaign the government has launched in sections of the press, Shankar is probably *assumed* guilty by the common man even *before* any charges have been framed. Not only has this destroyed his reputation and his business, the dust the government has raised around him has served their purpose: for some at least, it has muddied the impact of *Tehelka's* investigation and hurt its credibility.

Very few people would bother to go into the jungle of misinformation planted by the government and cull the facts. It is imperative therefore that, having read this fact file, one asks a few questions:

1) If the government suspects that Shankar Sharma has committed some transgressions, should he not be allowed due and proportionate processes of law and civil rights? All action against him is based not on actual tax demands or convictions but on the government's discretionary powers. It is worth remembering that politicians like Bangaru Laxman and Jaya Jaitley openly seen accepting money and abusing their office have been given the benefit of doubt and not been subjected to the same draconian investigation. There has been no Enforcement Directorate raid on Bangaru Laxman who is seen openly demanding dollars on the *Tehelka* tapes.

George Fernandes, Jaya Jaitley

2) Also, George Fernandes has been restored as Defence Minister though his name has not been cleared either from the allegations in the *Tehelka* tapes or the CAG report. If one can believe that he will not tamper with evidence when he has access to all the relevant papers and files as a minister, why should one believe that Shankar Sharma will tamper with evidence – especially when all of that evidence already lies out of his reach with government agencies?

3) Equally important, if the ED thinks First Global has committed a FERA violation requiring custodial detention while the investigation is underway, shouldn't all the other parties involved in the deal, including Finance Minister Yashwant Sinha's daughter-in-law whose company was also involved be subjected to the same treatment as FG?

The government has responded to Operation Westend in such mala fide ways that the aftermath of the investigation has become as important as the investigation itself. In that sense, 'Operation Post Westend' has become an entire expose in itself. To give just one example: every single affidavit that the government has filed before the Venkataswami Commission is against *Tehelka* and First Global. Not one affidavit has been filed against anyone featured on the tapes. Thus, according to the government, the only problem lies with the messenger, not the message.

The message is easy to read. By running *Tehelka* and its associates to the ground, the government is clearly warning off anybody who dares cross or expose them and their corruption. Operation Westend therefore is no longer merely a story of misuse of power, it has become a sign of a faltering democracy in which a government in power has given up even a pretence of accountability and public probity.

The government's actions post Operation Westend have begun to smack alarmingly of the Emergency years when any form of dissent was muzzled and it was a non-bailable offence to question the government. Classically, today it's *Tehelka* and First Global; tomorrow it could be anyone. As such, this has become a wake-up call for all Indian citizens who value their fundamental rights and freedoms. ❑