EXCERPTS FROM THE BOOK

"THE SCAM" WHO WON, WHO LOST AND WHO GOT AWAY"

- DEBHASIS BASU & SUCHETA DALAL

Sucheta's admissions in her above book conclusively establishes that her story was written on a pre-determined basis as it was false to her own knowledge, was lacking in any documentary evidence, was denied both by SBI and Harshad, that it was based on some tips of ex-employees received only on 22nd April and that very night by 10.30 pm she wrote the story. That when the story was written, Harshad had already within 4 working days returned to SBI a sum of Rs.616.17 Crores as demanded by it. The story was not only false but also very presumptive as she has straight away concluded that Harshad was engaged in committing a crime (scam) though there existed no motives for it, there was no *mens rea* (guilty mind), there was an impeccable record in completing all transactions. Besides the networth of his family was estimated to be about Rs.3000 Crores in which background he would not ever steal a sum of Rs.500 Crores from SBI as alleged and the fact that he returned large amounts within 4 working days itself demolishes her false case.

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So, when the scam was first reported on the front page of *The Times of India* on 23 April, the press did not even dare to name him. The story referred to him as the Big Bull, an epithet the press gave him when he single-handedly engineered the biggest bull run ever. Filed at 10.30 on the night of 22 April, the *Times* story was indeed sensational but seemed then like a stray case. After all it did'nt even use the word "scam", currently the most popular four-letter word.

It was'nt the pre-planned *expose* backed by documentary evidence that often appears in the western press and gets ministers sacked and businessmen jailed. **The Indian press has rarely been encouraged to do this kind of investigation.** And left to the regulatory and investigative agencies like the Central Bank, the Central Bureau of Investigation, Income Tax, the Enforcement Directorate and the like, evidence is often meticulously gathered only for the purpose of canning it.

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A former SBI employee picked up the gossip. He passed it on to *The Times of India* on 22 April.

Sucheta's admissions about payments already made by Harshad before she wrote her article on 22nd April 1992.

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That was a tall order even for Harshad. **His first payment – a cheques of Rs 243.18 crores from ANZ Grindlays Bank came in on Monday, the 13th** and then nothing for the rest of the week. Meanwhile a worried Khemani threatened, begged, cajoled and pleaded with Harshad to return the money. **What partly helped were the holidays between 14 and 18 April when the market was closed.** On the 18th, Khemani buzzed Subba Rao. "Call Harshad and force him to meet the chairman," he told him. Subba Rao agreed. Harshad got a call from the SBI the same day and turned up in Khemani's room.

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On the 18th, Harshad gave three more Grindlays cheques totaling to Rs 142 crores and two more on the 20th of Rs 160 crores. Two visits by the famous Harshad to the SBI headquarters within one week set tongues wagging. A former SBI employee picked up the gossip. He passed it on to *The Times of India* on 22 April. **A day earlier, Harshad had given in another Rs 5 crores.**

Only one cheque remained – of just Rs 6.35 crores – which Harshad would deliver on the 24th. Just one more day and Harshad would have made it and the SBI would have recovered its money and at the most, suspended Sitaraman and his boss A N Bavadekar, deputy manager, securities division at the main branch, who was blindly endorsing the transactions and signing the cheques that Sitaraman was putting up for his approval.

<u>Sucheta's rare compliments on Harshad</u>

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Believe it or not, the person worst affected in the scandal has been the most forthcoming of all. Despite the fact that the initial press report in the *Times* has precipitated it all, Harshad bore no ill will. He has given journalists time and information and complimented them for the work even when some of the articles were against his interest. This was a clever move to keep the press on his side but there was also a streak of pure enthusiasm, a sunny world-view that made him capable of appreciating anything remarkable.

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The scam was not limited to individuals. Everybody was in it, like vultures nibbling at a big, rotten corpse. But the public imagination was transfixed at one or two banks **and, more importantly, at the individual as the villain of the piece. His life and deals make for a fascinating story.**

Sucheta's false justifications for writing story which was factually denied and which had not been backed by evidence much less to reach a conclusion that the transactions were fictitious and entered into with the motive of committing a crime.

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Businessmen, officials, traders and regulators can all refuse information and deny the truth. They disclose what they want to, to whom they want to, creating an unequal battle between the powerful businessmen and officials and helpless, serious-minded journalists. The head of the Bank of America in India, Vikram Talwar, for instance, has been denying that the bank had done anything wrong till the third report of the Janakiraman Committee blew his covers. **When on 22 April, *The Times of India* asked M N Goiporia, chairman of the State Bank, about Harshad's problems in squaring up certain transactions, he denied it completely.** The Reserve Bank Governor called a press conference to deny something which he had not even checked on. **If one were to believe such denials, showing deference to these exalted men in power, no critical business story would ever get written.**

So what does a journalist do? Write a story on the basis of what he gathers in interviews – which is almost always off-the-record for all controversial information and therefore, sometimes useless as evidence in a court of law. One can, of course, buy information as businessmen do but Indian publishers have rarely done that. **So, devoid of "documents" – the mythical backbone of ethically correct journalism, either you don't write or you write a sanitized version of truth.**

Sadly, there is little awareness that this amounts to self-censorship in a Third World country like India where the courts, police and regulatory authorities have failed to protect public interest and the press has perforce had to play an adversarial role. Perhaps the scam was a chance to retrieve that role and putting mercenary foreign bankers, scheming brokers and bullying officials all on the defensive. The opportunity is virtually gone. Nobody made much use of it.

Sucheta knew that Chairman, SBI and DGM, SBI had denied her story which was also denied by Harshad. Sucheta also knew that within four working days Harshad had already repaid the monies to SBI after duly explaining why the securities could not be delivered.

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When Khemani bared all for Goiporia, Goiporia may not have been totally surprised. If Khemani knew something that Goiporia did'nt know, Goiporia knew something too. He was working in tandem with the RBI to choke off Harshad. **This was part of the RBI's "nab Harshad" plot which later gave the RBI governor S Venkitaramanan, the strength to claim "I caught the thief" and secured him the finance minister's backing when some powerful MPs wanted him out.** But more about that later.

On 11 April, as the Harshad-Sitaraman-PDO link became clear to Goiporia, Subba Rao and Khemani, they decided to call Harshad and ask him about the 14 December transactions done through him for which there were no entries at the branch. By that time the chief general manager (vigilance) had come to know that the SBS, one of the selling banks, had no such transaction with the SBI on the date stated. Later, another transaction with Harshad – of 21 March – turned out to be bad. Harshad was supposed to give Rs. 170 crores of an 11.5 per cent central loan of 2007. The money went out but no securities came in. Clearly, Harshad had picked up the money and Sitaraman had covered for him by showing fictitious buying from the PNB, SBS and other banks. Harshad owed the SBI Rs 499 crore and Rs 170 crores in two sets of transactions.

"I feel we should immediately call Harshad and ask him to explain. We must ask him to face the chairman. That will create pressure on him," said Khemani. Strangely, Goiporia refused.

"I think you should handle it yourself, he told Khemani. If it becomes impossible then call me."

Khemani was unhappy. He felt that a tough word or two from the chairman would be useful, keeping in mind the magnitude of the fraud. At around 12.30 in the afternoon, Khemani placed a call to Harshad. "Please come and see me immediately. It is urgent," he told Harshad.

Though Harshad had stopped dealing in securities, he readily agreed to come. He may have known about the fraud by then. From his office to Khemani's is a two-minute walk. Quite possibly, Harshad drove down because he entered Khemani's room at 12.30 sharp.

"You were supposed to deliver the securities…" started Khemani.

"Yes I know," interrupted Harshad. "Instead of SGLs, the PNB and the SBS have given BRs. I have taken the BRs from Sitaraman to get SGLs from the two banks. **But as you know, the Income Tax has sealed my offices. I don't have access to these BRs now."**

"That is your problem," said Khemani. **"Either you give us the securities or get the counterparty banks to pay."** After a moment's pause, he added **"Within a week. You must start making payments immediately."**

That was a tall order even for Harshad. His first payment – a cheque of Rs 243.18 crores from ANZ Grindlays Bank came in on Monday, the 13^{th} and then nothing for the rest of the week. Meanwhile a worried Khemani threatened, begged, cajoled and pleaded with Harshad to return the money. What partly helped were the holidays between 14 and 18 April when the market was closed. On the 18^{th}, Khemani buzzed Subba Rao. "Call Harshad and force him to meet the chairman," he told him. Subba Rao agreed. Harshad got a call from the SBI the same day and turned up in Khemani's room.

This time, he most certainly came in his car, his Rs 45 lakh Toyota Lexus, the world's topselling, new luxury model, driven by a white-gloved chauffeur. **It proved to be a fatal error. Word leaked out that Harshad had problems in reconciling his transactions with the SBI.**

Harshad was taken to Subba Rao's room and from there to the chairman. He was at his voluble best. He promised to square up in the next few days. "I am an honest man. I have all the BRs," he asserted. (Later, in jail, he told Khemani, "I am sorry for what has happened." Khemani probably felt like putting a trigger on him.) The rest of the time (almost 30 minutes) Harshad delivered a monologue on his investment philosophy. He had done the same thing with V Krishnamurthy, member, Planning Commission, his associates and on 1 April, with the RBI governor.

The cornerstone of Harshad's philosophy was his pet replacement cost theory, under which existing companies ought to be valued at the much higher cost of replacing them and not at the much lower historical cost as per conventional accounting methods. Looked at this way, many Indian companies appeared under-valued and were therefore, great scrips to buy. Harshad's other theory was that the Indian economy was turning around and it was time we invited foreign investors into Indian markets.

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The 23rd of April was a day like any other. Except that *The Times of India* carried a three-column story innocuously headlined, "Broker asked to square up Rs 500 crore". The broker was not named. He was referred to as the Big Bull. That was due to Goiporia's stonewalling. When he was asked whether it was true that Harshad Mehta had large outstandings with the SBI, he came up with an obfuscatory answer.

"Was there a problem of reconciliation with Harshad?" *The Times of India* asked Goiporia. "We deal in thousands of crores of securities. We do have reconciliation problems from time to time."

"Is Harshad Mehta unable to pay Rs 500 crores due to the SBI?" Goiporia responded: "Harshad Mehta? The broker? I can't comment," and he disconnected the phone.

Khemani was more categorical. "There is no problem here. It is completely false. A reconciliation gap of Rs 20 to Rs 30 crore is always there," he said, reducing the sum considerably.

Crucial role played by brokers acknowledged

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Brokers could not have traded heavily on their own. The system did not allow it. So, for years the brokers in money markets have had a double relationship with banks. For some deals he was just a broker while for others, he was a client. In the first role he acted as an agent earning his brokerage. In the second, the bank acted as agents to broker-clients and charged a fee for fronting the deals and putting cheques through. This was called routing. Sometimes the bank charge a commission reflecting the full deal in the current account of the broker. In other cases the routing bank owned up transactions on the bank's account and after charging its fee, debited/credited the broker's account for the difference. Routing helped the broker give his deals the status of a bank deal. He could then take a position and compete directly with other banks.

Brokers were of great use to banks as well. The government (rightly) wanted the public sector banks to compete and earn profits because they were close to bankruptcy. However, it (wrongly) wanted them to deliver results immediately with the same rotten infrastructure and skills and with their hands tied behind their backs. The banks, carrying huge bad loans on their books, saw treasury as the only way to make quick profits. They turned to their allies: the brokers. This explains why the chairman of the sick and bankrupt United Commercial bank, K Margabanthu, eager to turn the bank around, had a close nexus with Harshad.

Brokers saw an even bigger role for themselves as the Narasimha Rao government moved towards a system driven by markets and not by government dictates.

That as per BSE Regulations, brokers could take positions i.e. buy and sell securities on their own account in which case large cheques received against contracts were bound to be deposited in broker's accounts. This was neither siphoning nor scam as falsely propagated by Ms. Sucheta.

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The banks needed brokers' help to hide losses. In return the brokers needed bank money and their treasury deals to make abnormal profits. The mutual funds needed brokers and banks for subscription to their schemes while the brokers needed mutual funds to dump shares at high prices and liquidate the market. The cash-starved public sector needed banks to subscribe to their bonds in exchange for putting the same money back into the banks as portfolio schemes. Everybody was willing to accommodate the other guy, hindered only by individual jealousies and rivalries.

The password to this world of accommodation was "trust". The deals were put through first and the paperwork was done later. Sometimes even that was unnecessary. Call money transactions took place overnight, via the telephone and call receipts were sent leisurely three to four days later. In case of buyback deals, brokers liaised with the banks and acted as couriers in buying and selling the securities and perhaps, in some extreme cases, even routed some of the cash through their own accounts. Stanchart accepted photocopies of bond certificates as delivery. The whole system rested on trust. That trust was misused.

Indeed, so trusting were the banks and brokers of each other that banks were fronting for broker-deals through what is now known as "routing". They were funding brokers and putting through their transactions by lending their name. this was necessary because several banks still refused to trade directly with brokers as counterparts. So a fig leaf was needed – a fictional counterparty bank. In case the idea of "routing banks."

Several banks actively wooed brokers for their business, and brokers used to bargain with banks about the spread they would offer for the routing. This explains why Grindlays promptly credited more than Rs 500 crores received from the NHB into Mehta's account even without a covering note to do so. In a similar deal, the SBI credited Rs 90 crores to his account, allowing Mehta to withdraw it and square up its Rs 622 crore outstanding with the SBI. Grindlays and the SBI regularly routed money into Mehta's account even on oral instructions. The American Express did it for Ajay Kayan and Andhra Bank for Hiten Dalal. Banks, very simply, were too keen on accommodating brokers.

This was manifested in many other ways – most importantly in the way brokers were using bank money to do their own deals. **And Harshad was not alone.** Banks would buy securities from the broker with the understanding that the broker would take them back after a few months. The deal was just another way of lending money to the broker for a certain period. But it violated the RBI directive to banks against advancing money to brokers. Also, the broker got access to bank funds without having to comply with margin money requirements. **The practice was widespread.**

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The scam as seen today, was the result of a set of market practice. Banks were executing sales through false bank receipts (BRs) without holding securities. Brokers were using banks as fronts to fund themselves, and public sector money was gushing into the banking system to be diverted through brokers into, among other areas, the stock markets. Each of these practices were in clear violation of RBI regulations. **But what came as a stunner five months after the scam surfaced, were revelations in *The Times of India* that none of these practices were new.** Though the scale and intensity of the scam may have stunned even the market players, some of these practices go back to at least 1979. It was the turbulence in the financial markets in 1991-92 that had inflated figures to a giga scale and made the players reckless.

Through all this, RBI was acting like a one-eyed god. The other eye was often closed. When it did open sometimes, it merely winked.