**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION NO.1203 OF 2013**

Sunil Keshav Rane … Petitioner
Versus
Way2wealth Brokers Private Ltd. … Respondent

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Mr. Prashant G. Karande for the Petitioner.
Mr. Shyam Kapadia a/w Ms. Smruti Kanade i/b Negandhi, Shah & Himayatullah for the Respondent.

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**CORAM : S.C.GUPTE, J.**

**DATE : 9 JANUARY 2019**

**P. C. :**

. Heard learned Counsel for the parties.

2 This arbitration petition challenges an award passed by the Appellate Arbitral Tribunal of National Stock Exchange ("NSE"). The Petitioner is the constituent, whilst the Respondent is a trading member of NSE. Their disputes pertain to squaring off of the Petitioner's outstanding position by the Respondent in Futures & Options (F&O) Segment of NSE. It was the grievance of the Petitioner before the appellate arbitral tribunal that on 31 January 2008 at about 11.00 a.m., the Respondent's representative informed the Petitioner about the Nariman Point Office of the Respondent having squared off the Petitioner's open position as per the instructions of the Central Office of the Respondent. Before this squaring off, the Petitioner is claimed to have issued two cheques in advance for meeting its margin requirements for F&O trading. It was submitted before the

tribunal that despite these cheques being available with the Respondent, the outstanding position of the Petitioner was squared off by 11.00 a.m. on 31 January 2008. It was submitted that in view of such unauthorized squaring off, the Petitioner issued stop payment instructions to his bankers and as a result, the first cheque of Rs.4 lacs, dated 31 January 2008, was not honoured. It was submitted that the squaring off was contrary to the Regulations of F&O Segment of NSE, particularly, clause -(b) of Regulation 3.10. The learned arbitrators did not accept the Petitioner's version. The arbitrators took into account the fact that the squaring off occurred on the instructions of F&O Segment of NSE, which *inter alia* required under Regulation 2.6 that all derivative contracts would expire on pre-determined date and time, that is to say, the last Thursday of every trading month. The learned arbitrators noted that on 31 January 2008, as the last Thursday of that trading month, derivative contracts entered into by the Respondent broker on behalf of the Petitioner constituent expired and that the outstanding position of the Petitioner was required to be squared off. The Petitioner's contention that the squaring off occurred before his having issued stop payment instructions to his bankers was not accepted by the arbitrator. The arbitrator noted that the material on record showed that squaring off occurred after 01.00 p.m. around the close of the trading hours, by which time dishonour of the cheque was known to the Respondent broker. The arbitral tribunal also relied on the evidence produced by the Respondent-broker in the form of a compact disc (CD) recording the conversion between the Petitioner and the Respondent's representative as of that date, i.e. 31 January 2008 and its transcripts, to conclude that the Petitioner had in fact issued instructions for such squaring off.

3 These are all matters of fact. The conclusions of the arbitral tribunal are based on some evidence. It is not as if the award is passed on no evidence. Based on the material produced before them, the arbitrators have taken a view, which is a possible view. It is not a view which no fair or judiciously minded person could have taken or a view which would shock conscience of the court.

4 There is, in the premises, no merit in the challenge to the impugned award. The arbitration petition is accordingly dismissed.

**(S.C. GUPTE, J.)**