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

ARBITRATION PETITION (L) NO. 12924 OF 2025

Sheth and Company

...Petitioner

Versus

Union of India through Ministry of Railway

...Respondent

Mr. Sumit Rai a/w *Mr. Nitin Jain, Mr. Ratan Singh and Mr. Ankit Ujjwal*
i/b Agama Law Associates for the Petitioner.
Advocate for the Respondent appeared but appearance not tendered.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 17, 2025

ORDER :

1. Having heard the parties, it is seen that the cancellation notice dated April 1, 2025 imposes a “penalty” in the form of recovery of the amount equivalent to the security deposit in the sum of Rs. 50 Lakhs. The terms of utilisation of the security deposit is specifically referred to under the head “Other terms and conditions” in the instrument dated August 10, 2023 (found at Exhibit “D” of the Petition), which in fact, provides for damages and not penalty of an amount equivalent to the security deposit that the Petitioner may be liable to pay.

2. Necessarily, assessment of damages would need appreciation of evidence and it would not fall within the power of Respondent to unilaterally impose it and that too admittedly as a penalty, when the

provision itself specifically states that such damages equivalent to the security deposit would ***not*** be a penalty.

3. In these circumstances, a case has been made out for a stay on that portion of the cancellation notice which purports to impose a penalty, since the agreement between the parties neither contemplates imposition of penalty nor permits unilateral recovery.

4. No recovery as stated in the cancellation advice dated April 1, 2025 (found at Exhibit “B” of the Petition) shall be made.

5. Learned Counsel for the Respondent submits that she needs about a week’s time to take instructions on proceeding to arbitration straight away so that the assessment of damages could be moved to the Arbitral Tribunal.

6. Stand over to ***July 1, 2025***.

7. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court’s website.

[SOMASEKHAR SUNDARESAN, J.]