NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BALKRISHNA SETTY, individually and as general partner in Shrinivas Sugandhalaya Partnership with Nagraj Setty; SHRINIVAS SUGANDHALAYA (BNG) LLP, Plaintiffs-Appellees, v. SHRINIVAS SUGANDHALAYA LLP, Defendant-Appellant.	No. 18-35573 D.C. No. 2:17-cv-01146-RAJ MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Submitted June 3, 2019**
Seattle, Washington

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

Shrinivas Sugandhalaya LLP ("SS LLP"), an incense manufacturing company based in Mumbai, appeals the district court's order denying its motion to

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

compel arbitration and to grant a stay in a trademark action brought by Balkrishna Setty ("Balkrishna") and his company Shrinivas Sugandhalaya (BNG) LLP ("BNG LLP"), located in Bangalore.

We review de novo the district court's denial of a motion to compel arbitration. *Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 1259 (9th Cir. 2017). We review a district court's order denying a motion to stay pending arbitration for abuse of discretion. *Alascom, Inc. v. ITT North Elect. Co.*, 727 F.2d 1419, 1422 (9th Cir. 1984).

SS LLP, citing the arbitration clause in the Partnership Deed, seeks to compel arbitration under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), 9 U.S.C. § 201 *et seq.* and the Federal Arbitration Act ("FAA"), 9 U.S.C. § 2. Our recent decision in *Yang v. Majestic Blue Fisheries, LLC*, 876 F.3d 996 (9th Cir. 2017) forecloses both arguments.

It is undisputed that SS LLP is not a signatory to the Partnership Deed. In fact, SS LLP was not even in existence at the time the Partnership Deed was signed. As a non-signatory, SS LLP may not compel arbitration under the New York Convention. *See Yang*, 876 F.3d at 1001 (interpreting the Convention's phrase "signed by the parties" to include only signatories or parties to the agreement under which the litigant moves to compel and holding that "the [New

York Convention] does not allow non-signatories or non-parties to compel arbitration.").

To the extent that SS LLP seeks to compel arbitration under the FAA, this argument also fails. Under the FAA, a non-signatory may invoke arbitration if state law permits. *See Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630–32 (2009). However, where the FAA allows what the Convention prohibits, the Convention controls. *See Yang*, 876 F.3d at 1002 ("To the extent the FAA provides for arbitration of disputes with non-signatories or non-parties, it conflicts with the Convention Treaty and therefore does not apply."); 9 U.S.C. § 208 ("Chapter 1 [of the FAA] applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the [New York] Convention as ratified by the United States").

SS LLP makes a couple of other arguments on appeal. First, SS LLP argues that BNG LLP and SS LLP are parties to the Deed of Partnership because they are both "assigns" of the respective brothers. This argument was not raised before the district court, does not have much support in the record, and requires fact-finding that our court is not positioned to conduct. Second, SS LLP argues that, because the arbitration process "has begun" in India (through SS LLP serving a demand on Balkrishna), a stay is appropriate. This argument was dismissed by the district court in a separate order that is not before our court.

Because the New York Convention does not permit SS LLP to compel arbitration, the district court did not abuse its discretion in denying a stay of proceedings pending arbitration.

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)
Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ► A material point of fact or law was overlooked in the decision;
  - ► A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ► An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ► Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ► The proceeding involves a question of exceptional importance; or
- ► The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms.*
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms.*

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

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- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ► Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ► and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

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