

APPENDIX

APPENDIX

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APPENDIX A

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 18-35573

D.C. No. 2:17-cv-01146-RAJ

[Filed June 6, 2019]

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.)

MEMORANDUM*

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

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

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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 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

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

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

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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.

APPENDIX B

HONORABLE RICHARD A. JONES
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No. 2:17-cv-01146-RAJ

[Filed November 15, 2018]

BALKRISHNA SETTY, individually)
and as general partner of Shrinivas)
Sugandhalaya Partnership with Nagraj)
Setty, and SHRIVINAS)
SUGANDHALAYA (BNG) LLP)
Plaintiffs,)
)
v.)
)
SHRINIVAS SUGANDHALAYA LLP)
and R. EXPO (USA), INC.,)
Defendants.)
)

ORDER

This matter comes before the Court on Defendant Shrinivas Sugandhalaya LLP's ("SS Mumbai") motions to stay this matter pending appeal and arbitration in India. Dkt. ## 79, 85. Plaintiffs Balkrishna Setty and Shrinivas Sugandhalaya (BNG) LLP ("SS Bangalore"), oppose the motions. Dkt. ## 83, 86. Defendant R. Expo

(USA), Inc. (“R. Expo”) does not oppose a stay of this matter. For the reasons that follow, the Court **GRANTS** Defendant’s Motion to Stay Pending Appeal (Dkt. # 79), and **DENIES** Defendant’s Motion to Stay Pending Arbitration (Dkt. # 85).

I. BACKGROUND

Plaintiffs filed this action on December 15, 2016, alleging that Defendants engaged in in unfair competition, false advertising, false designation of origin, and fraudulent trademark registration. Dkt. # 1. Defendant SS Mumbai then filed a motion to dismiss or stay this action, seeking to enforce the arbitration clause of a Partnership Deed signed by Plaintiff Balkrishna Setty and his brother, Nagraj Setty, the founder of Defendant SS Mumbai. Dkt. # 59. On June 21, 2018, the Court denied Defendant’s Motion, because Defendant SS Mumbai was not a signatory or a third-party beneficiary to the Partnership Deed and because equitable estoppel did not apply. Dkt. # 72. The background of this case is set out in further detail in that Order and is incorporated here. *Id.*

Defendant SS Mumbai then filed two additional motions to stay. Dkt. # 79, 85. The first motion requests that the Court stay this action pending the outcome of Defendant’s appeal of the Court’s previous Order. Dkt. # 79. After the first motion was filed, the founder of Defendant SS Mumbai, Nagraj Setty, sent a letter to Plaintiff Balkrishna Setty invoking the arbitration clause in the Partnership Deed and commenced arbitration proceedings in Mumbai, India. Dkt. # 85 Ex. 2. Defendant then filed the second motion to stay. Dkt. # 85. The second motion requests that the

Court stay this action until the arbitration proceedings in India have concluded. *Id.*

II. LEGAL STANDARD

A district court has discretionary power to stay proceedings in its own court. *Landis v. N.A. Co.*, 299 U.S. 248, 254-255 (1936); *see also Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005). “A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). “A stay should not be granted unless it appears likely the other proceedings will be concluded within a reasonable time in relation to the urgency of the claims presented to the court.” *Id.* at 864. When considering a motion to stay, the district court weighs three factors: (1) the possible damage which may result from the granting of a stay, (2) the hardship or inequity which a party may suffer in being required to go forward, and (3) the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

III. DISCUSSION

The Court finds that there is good cause to grant a stay of these proceedings. At issue is whether this matter should be stayed pending the outcome of the Defendant’s appeal of the Court’s June 21, 2018 Order,

or whether it should be stayed pending the outcome of the arbitration proceedings in India.

A. Stay Pending Appeal

Defendant argues that they will be irreparably harmed absent a stay because they will lose the benefit of the arbitration clause in the Partnership Deed if they are forced to continue litigating while their appeal is still pending. This argument is directly contradicted by Defendant and Mr. Nagraj Setty's actions. Mr. Nagraj Setty is currently attempting to invoke the arbitration clause of the Partnership Deed in India and Defendant offers no argument that this appeal has affected Mr. Setty's ability to do so. However, should the Ninth Circuit decide that this case should be in arbitration, continuing litigation in this forum will cause the parties to incur litigation-related costs that may later be found to be unnecessary. At this time, Defendant represents that the parties have not yet begun discovery, and that Mr. Nagraj Setty, as founder of Defendant SS Mumbai, would be forced to travel to the United States to participate in these proceedings if a stay is not granted. As such, continuing this litigation would cause Defendant to incur significant costs and hardship.

Plaintiffs argue that a prolonged stay of this matter would substantially injure them due to the difficulty of preserving evidence and because Defendant SS Mumbai's continued alleged infringement of Plaintiffs' intellectual property rights would cause irreparable harm to Plaintiffs' brand, goodwill, and business reputation. The Court agrees that these are valid concerns and possible harms that could result from a

stay, however, should it be decided that Plaintiff's claims are subject to arbitration, the hardship or inequity of forcing the parties to move forward outweigh these possible harms. Plaintiffs also fail to demonstrate what evidence is in danger of being lost or how it will be lost beyond an implication that the passage of time would fade memories. Dkt. # 89 at 9. Therefore, Defendant's Motion to Stay Pending Appeal is **GRANTED**. Dkt. # 79.

B. Stay Pending Arbitration in India

The Court must now consider whether this matter should be stayed until the resolution of arbitration proceedings in India. Defendant argues that the arbitration in India will decide the same intellectual property issues that are the basis of this litigation. Dkt. # 85 at 2. Defendant bases this argument on Mr. Nagraj Setty's arbitration demand letter, which was written and sent by his local counsel in India. However, it is unclear whether all of Mr. Nagraj Setty's claims are subject to arbitration or whether they will actually come before the arbitrator. As noted in the Court's previous Order, the Partnership Deed did not assign intellectual property rights, and "the conduct alleged in the Complaint is not intertwined with the Partnership Deed such that the claims arise" out of that Deed. Defendant does not provide support for their contention that the arbitration demand letter conclusively determines what claims can be arbitrated under the Partnership Deed, only that the arbitration demand letter formally begins the arbitration process under Indian law. Plaintiffs also argue that they have not agreed to arbitrate these claims in India, therefore it is

unclear whether those arbitration proceedings will move forward in the manner that Defendant contends. Therefore, Plaintiffs' argument that this matter should be stayed because the arbitrator and the Court would be ruling on the same issues simultaneously, is also unpersuasive.

Defendant argues that they would incur significant costs if this action is allowed to proceed while the arbitration in India is ongoing. The Court agrees that unnecessary litigation costs would be a significant hardship, especially if it is decided that these claims must go to arbitration on appeal. However, Mr. Nagraj Setty and Defendant created this new additional financial burden by initiating arbitration proceedings without waiting for the outcome of Defendant's appeal. These additional costs are self-inflicted and appear to be an attempt to force these proceedings into arbitration, despite the Court's previous Order.

Defendant also argues that Section 3 of the Federal Arbitration Act ("FAA") requires that the Court stay this action now that arbitration has begun in India. The FAA states that, "[i]f any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action." 9 U.S.C. § 3. Contrary to Defendant's assertion, the allegation that separate arbitration proceedings will cover an issue involved in this litigation is not

sufficient to require the Court to stay this matter. Section 3 requires that that a district court stay proceedings pending arbitration if it is satisfied that the parties have agreed in writing to arbitrate an issue underlying the district court proceeding. The Court has not found that this is necessarily the case here.

As it is unclear at this time how or even if, the arbitration proceedings in India will affect Plaintiffs' claims, granting a stay of this matter pending resolution of those proceedings would be overly prejudicial to Plaintiffs. While Defendant represents that Plaintiffs will be able to pursue their claims in those arbitration proceedings, taking into account all of the above, the Court will not grant a stay merely on the basis of that representation. Further, as the Court is already granting Defendant's motion to stay this matter pending their appeal and Defendant is currently attempting to litigate this matter in their chosen forum, a stay of this matter pending the outcome of the arbitration proceedings in India would cause prejudice and harm to Plaintiffs that far outweighs the possible prejudice and harm to Defendant. Defendant's Motion to Stay pending arbitration proceedings in India is **DENIED**. Dkt. # 85.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant's Motion to Stay Pending Appeal (Dkt. # 79), and **DENIES** Defendant's Motion to Stay Pending Arbitration (Dkt. # 85).

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Dated this 15th day of November, 2018.

/s/ Richard A. Jones
The Honorable Richard A. Jones
United States District Judge

APPENDIX C

HONORABLE RICHARD A. JONES
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No. 2:17-cv-01146-RAJ

[Filed June 21, 2018]

BALKRISHNA SETTY, individually)
and as general partner of Shrinivas)
Sugandhalaya Partnership with Nagraj)
Setty, and SHRIVINAS)
SUGANDHALAYA (BNG) LLP)
Plaintiffs,)
)
v.)
)
SHRINIVAS SUGANDHALAYA LLP)
and R. EXPO (USA), INC.,)
Defendants.)
)

ORDER

This matter comes before the Court on Defendant Shrinivas Sugandhalaya's ("SS Mumbai") motion to dismiss or stay in favor of arbitration. Dkt. # 59. Plaintiffs oppose the motion. Dkt. # 65. Defendant R. Expo (USA), Inc. ("R. Expo") does not oppose arbitration but requests severance if the Court decides

to grant SS LLP's motion. Dkt. # 64. For the reasons that follow, the Court **DENIES** Defendant's motion.

I. BACKGROUND

Mr. K.N. Satyam Setty formed an incense manufacturing and distribution partnership in India. Dkt. # 1 (Complaint) at ¶ 16. Mr. Setty's sons, Balkrishna and Nagraj Setty, continued the partnership after their father passed. *Id.* The sons signed a Partnership Deed agreeing to manufacture the incense and split the profits equally. Dkt. # 60-1. The Partnership Deed included an arbitration clause, stating:

All disputes of any type whatsoever in respect of the partnership arising between the partners either during the continuance of this partnership or after the determination thereof shall be decided by arbitration as per the provision of the Indian Arbitration Act, 1940 or any statutory modification thereof for the time being in force.

Id.

In 2014, the sons started their own companies, irrespective of the Partnership, and "control of the manufacturing of incense products was effectively transferred from the Partnership to its partners," Balkrishna and Nagraj Setty. Dkt. # 1 (Complaint) at ¶ 51. Mr. Balkrishna Setty's company is Shrinivas Sugandhalaya (BNG) LLP ("SS Bangalore"), located in Bangalore. *Id.* at ¶¶ 52, 53. Mr. Nagraj Setty's company is Shrinivas Sugandhalaya LLP ("SS Mumbai"), located in Mumbai. *Id.* at ¶¶ 54, 55. Mr.

Balkrishna Setty claims that he and his brother are now competitors rather than partners. *Id.* at ¶ 58.

Plaintiffs claim that SS Mumbai misrepresented where it manufactured its incense—by putting Bangalore on the packaging rather than Mumbai—in an effort to confuse customers about the quality of the product. *Id.* at ¶¶ 85, 86. Plaintiffs also accuse SS Mumbai of interfering in Plaintiffs’ business by sending cease and desist letters that claim SS Bangalore is infringing on Defendants’ trade dress rights. *Id.* at ¶ 108. Plaintiffs further claim that SS Mumbai fraudulently obtained trademark registrations for the mark and design of its incense. *Id.* at ¶ 122.

SS Mumbai is now before the Court seeking dismissal or stay in proceedings because it claims that Plaintiffs must bring their claims in arbitration—pursuant to the Partnership Deed—and not in this forum. Dkt. # 59.

II. LEGAL STANDARD

Because the Federal Arbitration Act (“FAA”) requires courts to “direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed, the FAA limits court involvement to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.” *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008) (internal quotations omitted). The party opposing arbitration bears the burden of showing that the agreement is not enforceable. *See Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 91-92 (2000);

Rodriguez de Quijas v. Shearson/American Exp., Inc., 490 U.S. 477, 483 (1989).

Regarding the first prong, “arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1126 (9th Cir. 2013) (citing *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960)). Generally, the contractual right to compel arbitration “may not be invoked by one who is not a party to the agreement and does not otherwise possess the right to compel arbitration.” *Id.*

Regarding the second prong, “[t]he scope of an arbitration agreement is governed by federal substantive law.” *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999). If a contract contains an arbitration clause, there is a presumption that the dispute is arbitrable. *AT & T Techs., Inc. v. Comm’n Workers of America*, 475 U.S. 643, 650 (1986). In that case, “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Simula*, 175 F.3d at 719.

III. DISCUSSION

A nonsignatory may compel a signatory to arbitrate under certain circumstances, such as when the nonsignatory was a third-party beneficiary to the arbitration agreement or when an alternative estoppel theory dictates. *Lucas v. Hertz Corp.*, 875 F.Supp.2d 991, 1000-1001 (N.D. Cal. 2012).

Only one party in this lawsuit was a signatory to the Partnership Deed—Mr. Balkrishna Setty. SS

Mumbai was not a signatory to the Partnership Deed, nor was it a third-party beneficiary as it did not exist until several years after the Setty brothers signed the Partnership Deed. Nonetheless, SS Mumbai argues that Plaintiffs' claims are dependent on rights allegedly derived from the Partnership Deed. Dkt. ## 59 at 11, 67 at 3. As such, SS Mumbai argues that equitable estoppel results in Plaintiffs' need to arbitrate this dispute.

Under theories of equitable estoppel, a nonsignatory may compel arbitration: "(1) when the signatory's claims against a nonsignatory arise out of the underlying contract; and (2) when the nonsignatory's conduct is intertwined with a signatory's conduct." *Lucas*, 875 F.Supp.2d at 1002; *see also Rajagopalan v. NoteWorld, LLC*, 718 F.3d 844, 847 (9th Cir. 2013) ("Where other circuits have granted motions to compel arbitration on behalf of non-signatory defendants against signatory plaintiffs, it was 'essential in all of these cases that the subject matter of the dispute was intertwined with the contract providing for arbitration.'") (citations omitted); *Kramer*, 705 F.3d at 1128 ("Equitable estoppel precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes.") (quoting *Comer v. Micor, Inc.*, 436 F.3d 1098, 1101 (9th Cir. 2006)).

Neither theory of equitable estoppel applies here. The Partnership Deed did not assign intellectual property rights, and therefore there is nothing for the Court to interpret in the Partnership Deed with regard to those claims. Dkt. # 60-1. Moreover, the conduct

alleged in the Complaint is not intertwined with the Partnership Deed such that the claims arise out of the underlying contract. Instead, the conduct relates to how the new entities—SS Bangalore and SS Mumbai—manufacture and advertise their products, compete with each other, and whether SS Mumbai properly registered its trademarks. Dkt. # 1 (Complaint). This conduct is divorced from the underlying Partnership Deed, which set out to define the manufacturing relationship and financial divisions between the two brothers while they remained partners. Dkt. # 60-1.

To utilize the second theory of equitable estoppel, SS Mumbai would need to show that its conduct is interdependent with the conduct of a signatory. *Hawkins v. KPMG LLP*, 423 F.Supp.2d 1038, 1051 (N.D. Cal. 2006). SS Mumbai's conduct is not intertwined with that of a signatory to the Partnership Deed. Indeed, the Complaint makes allegations against two nonsignatories. Dkt. # 1 (Complaint). The purpose of compelling arbitration when a nonsignatory defendant's conduct is intertwined with a signatory defendant's conduct is to ensure that the signatory has the benefit of the arbitration agreement. *Id.* at 1050. Neither SS Mumbai nor R. Expo are signatories to the Partnership Deed; the concern that a signatory may be denied the benefit of an arbitration agreement is not present here.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Defendant's motion. Dkt. # 59.

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Dated this 21st day of June, 2018.

/s/ Richard A. Jones
The Honorable Richard A. Jones
United States District Judge

APPENDIX D

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 18-35573

D.C. No. 2:17-cv-01146-RAJ

Western District of Washington, Seattle

[Filed August 12, 2019]

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.)

ORDER

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

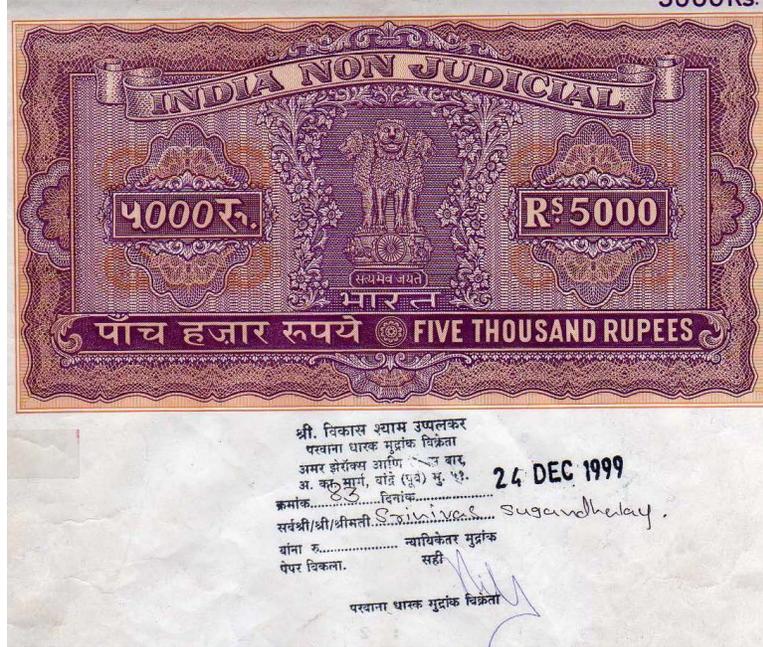
The members of the panel that decided this case voted unanimously to deny the petition for rehearing. Judges Rawlinson and Bea voted to deny the petition for rehearing en banc. Judge Nelson recommended denial of the petition for rehearing en banc.

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The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. (Fed.R. App. P. 35.)

The petition for rehearing and the petition for rehearing en banc are denied.

APPENDIX E



DEED OF PARTNERSHIP

[Dated December 24, 1999]

THIS DEED OF PARTNERSHIP made and entered into at Mumbai on this 24 th December 1999. BETWEEN (1) SHRI. NAGRAJ S. SETTY, residing at A/302 Powai Vihar, Near Hiranandani Garden, Powai, Mumbai – 400 076, Indian Hindu Inhabitant of Mumbai hereinafter called the party of the First Part (Which expression shall mean and includes his heirs, executors, administrators and assign) And (2) SHRI. BALKRISHNA S. SETTY residing at A/302, Powai

Vihar, Near Hiranandani Garden, Powai, Mumbai – 400 076, Indian Hindu Inhabitant of Mumbai hereinafter called the party of the Second Part (Which expression shall mean and includes his heirs, executors, administrators and assign)

WHEREAS Party of the First part and Second part along with late Shri. K.N.S. Setty have been carrying on business in Partnership under the name & style of M/S. Shrinivas Sugandhalaya at E-107, Ansa Industrial Estate, Saki Vihar Road, Sakinaka, Mumbai – 400 072, dealing in Dhooops and all kinds of Agarbatti governed by the deed of partnership dt. 22nd Nov. 1985 and subsequent amended deed of partnership dt. 2nd April 1992. Where as Shri. K.N.S. Setty retired from the partnership due to his death on 9th November 1999 and his share of profit, salary and interest in his Capital till 9th Nov. 1999 has been credited to his Capital A/c and account have been settled. WHEREAS party of the First and Second part have decided to continue the said Partnership firm as going concern on certain terms and conditions mentioned herein below.

NOW THEREFORE THIS INDENTURE OF PARTNERSHIP WITNESSETH AS UNDER : –

1. **NAME** : *The name of the Partnership firm is and shall be M/s. Shrinivas Sugandhalya or any other name or names as may be mutually decided by the partners from time to time.*
2. **BUSINESS** : *The business of the partnerships is and shall be that of Manufacture of quality Agarbatties & Dhooops and such other business or*

businesses as may be mutually agreed upon by the partners from time to time.

3. **PLACE** : *The partnership business is and shall be carried on at E-107, Ansa Industrial Estate, Saki Vihar Road, Sakinaka, Mumbai – 400 072, and/or at any other place or places as may be mutually agreed upon from time to time.*
4. **EFFECT** : *The new partnership terms and conditions shall be deemed to have effect on and from 10th November 1999.*
5. **DURATION** : *The duration of the partnership is “AT WILL”.*
6. **CAPITAL** : *The Capital of the partnership firm shall be contributed by both the partners, as they may mutually decide from time to time and it is agreed by and between the parties hereto the simple interest at the rate of 18% per annum or at such other rate as may be prescribed u/s 40(b) of the Income-tax Act, shall be payable by the firm on the amount standing to the credit of capital, current, loan account of the partners.*
7. **CONDUCT OF BUSINESS** : *The party of the First and Second part, have agreed that both the partners shall be working partners and shall devote their time for handling the business of the firm. Further the managerial and administration decision shall be taken by both partners for the partnership business.*

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8. **REMUNERATION**: *It is agreed by and between the parties hereto that the total remuneration payable to the working partners shall be worked out as under : –*

In case of loss or book profit upto Rs. 75,000/- for the year *Rs. 50,000/- or 90% of the book profit whichever is higher.*

On the amount of book profit exceeding Rs. 75,000/- but not exceeding Rs. 1,50,000/- for the year. *60% of the excess over Rs. 75,000/-*

On the book profit exceeding Rs. 1,50,000/- for the year. *40% of the excess over Rs. 1,50,000/-*

Explanation : *For the purposes of this clause the expression “Book Profit” shall mean the “Book Profits as defined in u/s 40(b) of I.T. Act, 1961 or any statutory modification or re-enactment thereof, for the time being in force”.*

Such total remuneration shall be paid to the working partners in the following ratio, that is to say,

1. *SHRI. NAGRAJ S. SETTY* 50%

2. *SHRI. BALKRISHNA S. SETTY* 50%

Total 100%

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The remuneration payable to the working partners as above shall be credited to their respective accounts on ascertainment of book profits.

Each working partners shall be entitled to draw against the remuneration payable to him and if his total withdrawals during the year exceed the amount of remuneration found payable to him such excess shall be refunded by him to the firm.

9. **SHARES** : *That the net profits and losses of the firm after deducting the interest and remuneration to the partners and capital profits and losses shall be divided between the partners in the following rations :-*

1. SHRI. NAGRAJ S. SETTY	50%
2. SHRI. BALKRISHNA S. SETTY	50%

Total	100%

10. **ACCOUNTING PERIOD** : *Accounting period of the partnership business shall be financial year i.e. from April to March every year.*

11. **BANK ACCOUNT** : *Bankers of the firm shall be as the partners may mutually agree upon from time to time and the same shall be operated by signature of any one of the partners.*

12. **AUTHORITY** : *Every partner is authorised to sign any document in connection with the partnership in ordinary course of business and all those documents signed by any partner shall be binding on all the partners.*
13. **ACT FORBIDDEN** : *No partner shall without the consent of the other partners :—*
 - a. *Create any charge or lien on the property of the firm.*
 - b. *Mortgage of assign his share or interest in the firm.*
 - c. *Except in ordinary course of business give any security or promise for payment of money on account of the firm.*
 - d. *Secure surety or gaurantee for any person or knowingly suffer anything whereby the property of the partnership may be endangered.*
14. **ARBITRATION** : *All disputes of any type whatsoever in respect of the partnership arising between the partners either during the continuance of this partnership or after the determination thereof shall be decided by arbitration as per the provision of the Indian Arbitration Act, 1940 or any statutory modification thereof for the time being in force.*

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals the day and the year first hereinabove written.

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SIGNED SEALED AND DELIVERED
by the withinnamed party of the
First Part SHRI. NAGRAJ S. SETTY
in the presence of /s/ [illegible]

SIGNED AND SEALED DELIVERED
by the withinnamed party of the
Second Part SHRI. BALKRISHNA S. SETTY
in presence of /s/ [illegible]