* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement delivered on: 23.05.2025

\+ **RFA(COMM) 479/2024**

M/S K HOME APPLIANCES .....Appellant

versus

M/S MARVS TRAVEL INDIA PVT. LTD. & ORS.

.....Respondents

Advocates who appeared in this case

For the Appellant	:	Mr Nipun Katyal with Mr Dhananjai Shekhawat and Mr Archit Jain, Advocates.
For the Respondents	:	Mr Sahil Mongia, Ms Sanjana Samor and Mr Yash Yadav, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The present Appeal is filed being aggrieved by the judgment and final order dated 12.08.2024 passed by the learned District Court (Commercial Court-2), West District, Tis Hazari Courts, New Delhi ('**District Court**') in CS (Comm) No. 555 of 2021 ('**Suit**') filed by Appellant / M/s K Home Appliances. Appellant has assailed the impugned judgement on the ground that the learned District Court dismissed the Suit of Appellant holding that there was no privity of contract between Appellant and Respondent No.1 / M/s Marvs Travel India Pvt. Ltd. and held that M/s Marvs Travels Australia Pvt. Ltd. ('**MTG**') was the necessary party, without considering the correspondence exchanged between Appellant and Respondent No. 1.

2. The learned District Court has further held that Respondent No. 1 was the agent of MTG. Since there is no privity of contract between Appellant and Respondent No. 1, the Suit was dismissed holding that Appellant was not entitled to recover any amount from Respondent No. 1.

3. Being aggrieved by the impugned order, Appellant has preferred the present Appeal, *inter alia*, praying for the following relief:

> a. set aside the judgement and final order dated 12.08.2024 passed by the Ld. District Court (Comm-02), West, TisHazari Courts, in CS (Comm.) 555/2021; and
>
> b. decree the Suit in terms of the reliefs claim therein;

FACTUAL BACKGROUND:

4. Appellant has contended that in November 2019, Appellant intended to reward its distributors, agents, and authorized dealers by organizing a group trip to Australia for 63 individuals. For this purpose, Appellant arranged a fully sponsored week-long tour to Australia as a gesture to boost the morale and motivation of its business associates.

5. For the purpose of arranging a seamless tour, Appellant reached out to Mr. Jatin Chaudhary of Plan My Tours ('**PMT**'), who further introduced Appellant to Mr. Sanam Nijhawan / Respondent No. 2. Respondent No. 2 is a Director and operator of Respondent No. 1 and he presented himself as a market leader in the tours and travel industry and assured Appellant that he had experience in handling large international tours to various countries including Australia.

6. Respondent No. 2 further informed Appellant that his brother operates a sister concern of Respondent No. 1 in Australia being MTG.

7. On 29.11.2019, after negotiations between Appellant, Respondent No. 1 and MTG, they reached a consensus on an amount of $1245 AUD per person to be paid by Appellant to Respondents for an all-inclusive trip to Australia from 6th June 2020 to 12th June 2020.

8. It is Appellant's case that in order to confirm the booking, Appellant paid an advance payment to the tune of ₹8,00,000 to Respondent No. 1 in its bank account.

9. Appellant was informed about the cancellation policy as follows:

- Cancellations made 40 days prior to travel will be fully refundable.
- Cancellations made within 30 days of travel or less will incur a charge of 25%.
- Cancellations made within less than 15 days of travel will be non-refundable.

10. Due to the outbreak of COVID-19, Appellant was compelled to cancel the planned tour to Australia on 25.03.2020 and demanded a full refund of ₹8,00,000/- paid to Respondent No. 1 as per the cancellation policy, which allowed Appellant to claim a full refund provided the trip was cancelled 40 days prior to the scheduled date of travel.

11. As no refund was received, Appellant filed a Suit before the learned District Court against Respondents without impleading MTG as a defendant.

12. *Vide* the impugned judgement, the learned District Court dismissed the Suit of Appellant, holding that there was no privity of contract between Appellant and Respondent No.1 and as MTG was the necessary

party, the Suit was bad for non-joinder. The learned District Court further held that Respondent No.1 was merely an agent of MTG, and cannot be held liable for its principal. As a result, it was held that Appellant was not entitled to recover any amount from Respondent No. 1 paid as an advance towards the planned trip to Australia.

13. Being aggrieved by the impugned judgment, Appellant has preferred the present appeal.

SUBMISSIONS ON BEHALF OF APPELLANT

14. The learned counsel for Appellant has submitted that the learned District Court was incorrect in holding that Appellant had no privity of contract with Respondent No.1. It was further submitted that the documentary evidence clearly demonstrated that there were communications between Mr. Jatin of PMT, Respondent No. 1 and MTG. All the emails to Respondent No. 1 were also marked to MTG and even the payment of advance was made to Respondent No. 1.

15. Appellant has submitted that Respondents falsely assured Appellant that they were capable of arranging the tour and induced Appellant to enter into the contract with MTG based on the misrepresentation by Respondents.

16. Appellant has relied upon the decision of Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*** **(1986) 3 SCC 156** to submit that the agreements obtained by misrepresentation are voidable at the instance of the party who is misled. Appellant has also relied upon the landmark case of ***Carlill v. Carbolic Smoke Ball Co.*** **[1893] 1 QB 256** which held that a misrepresentation by a contracting party can nullify an agreement. In the present case,

Respondents misrepresented their credentials and connections in Australia, thereby, vitiating the contract. Respondents' assurances and testimonials, misled Appellant into entering the contract under false pretences.

17. Appellant submitted that the learned District Court erroneously concluded that the absence of Mr. Jatin of PMT as a party to the Suit adversely affected Appellant. The learned counsel for Appellant has relied upon the decision of the Hon'ble Supreme Court in ***Indian Oil Corporation Limited v. Amritsar Gas Service*** **1991 1 SCC 533**, which held that a contract can still be enforced even if certain intermediaries were not joined as a party, provided that the primary parties are involved. Further, Respondents have not disputed the communications with Mr. Jatin of PMT hence, he was not a necessary party, without whom, the Suit cannot be decided against Respondents.

18. As regards the privity of contract between the parties, the learned counsel for Appellant has relied upon the decision of the Hon'ble Supreme Court of India in ***M/s Hindustan Construction Company Ltd. v. State of Bihar*** **(1999) 8 SCC 436** to submit that where the consideration has been given and a mutual agreement exists, a valid contract is established. The fact that Respondents had offered to arrange the tour for Appellant and accepted an advance of ₹ 8,00,000/-, the same clearly indicates affirming the privity of contract.

19. Appellant has submitted that the learned District Court erred in coming to the conclusion that Respondent No.1 was merely a call centre for MTG. It was submitted that if an entity claims to be an agent, it must demonstrate and prove with concrete evidence to establish the principal-agent relationship. In the absence of any substantial proof about the

relationship of agency, Respondent No. 1 cannot be treated as an agent of MTG.

20. The learned counsel for Appellant has relied upon the decision of ***Union of India v. Vasavi Co-operative Housing Society Ltd.*** **(2014) 2 SCC 269** to submit that procedural missteps in evaluating contractual terms can render the judgments untenable. In the instant case, by failing to accurately assess the contractual relationship between the parties, Appellant has been deprived of its rightful claim.

21. In view of the same, Appellant has prayed for setting aside of the impugned judgement passed by the learned District Court, as Appellant is entitled to recover the full amount of ₹8,00,000/- from Respondent No. 1 along with interest. Appellant has also prayed for decreeing the Suit.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1

22. The learned counsel for Respondent No.1 has submitted that Respondent No. 1 has never been a service provider for travel or tourism, including international tours. It was further submitted that Respondent No. 1 was merely a BPO/Call Centre/Agent for MTG, which is based in Australia and is engaged in organising travel and tourism groups.

23. The learned counsel for Respondent No. 1 has submitted that there was no privity of contract between Appellant and Respondent No.1 and the contract was between Appellant and MTG. All the documents and communications on record established that the offer for an international holiday was made by MTG and not by Respondent No.1. The itinerary and invitation letter also verified that MTG was the service provider.

24. It was further submitted that the offer for the tour was made by MTG to Appellant and not by Respondent No. 1. PW1 admitted during

the cross-examination that MTG prepared the quotation and itinerary. Hence, the Suit against Respondent No. 1 was unsustainable.

25. It was further submitted that despite knowing MTG's details, Appellant has deliberately not joined MTG as a party to the Suit. Section 230 of the Indian Contract Act, 1872, provides that an agent cannot be bound by the contracts on behalf of principal, unless expressly agreed to be bound. In the instant case, there was no express agreement between Appellant and Respondent No. 1 to be bound by the contract entered into between Appellant and MTG. There was no separate contract between Appellant and Respondent No. 1. The payments made to Respondent No. 1 by Appellant were made on behalf of MTG, which has been acknowledged by MTG in emails dated 04.12.2019, 13.12.2019, 24.12.2019 and 27.12.2019.

26. It was further submitted that PW1 in the cross-examination has admitted that the quotation was prepared by MTG and not by Respondent No.1. PW1 also admitted that the cancellation policy allowed a full refund if cancelled 40 days prior and that the cancellation policy was offered by MTG and not by Respondent No. 1. Despite that, Appellant chose not to file the Suit against MTG.

27. It was submitted by Respondent No. 1 that the request dated 25.03.2020 for cancellation of the tour was also sent to MTG and not Respondent No. 1 and the refund was also sought by Appellant from MTG and not Respondent No. 1.

28. Respondent No.1 further submitted that PW1 in cross-examination has admitted that MTG handled booking and logistics proving that there was no privity of contract between Appellant and Respondent No.1. Respondent No.1 submitted that Appellant has tried to improve its case

and deposed falsely before the learned District Court. Therefore, the well-reasoned impugned judgment is required to be upheld and this Appeal deserves to be dismissed with heavy cost.

SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 2 & 3

29. It is submitted on behalf of Respondent Nos. 2 and 3 that Appellant has wrongly joined Respondent Nos. 2 and 3 in the present appeal despite the fact that in the Suit they were struck off from the array of parties *vide* order dated 06.04.2023 passed by the learned District Court. An amended memo of parties was also filed by Appellant in the Suit removing Respondent Nos. 2 and 3 from the array of the parties and the same was recorded in the order dated 18.04.2023 passed by the learned District Court. In view of the same, Respondent Nos. 2 and 3 have prayed for dismissal of the Appeal.

ANALYSIS AND FINDINGS:

30. The main issues for consideration in this Appeal are whether Respondent No. 1 was an agent of MTG and had no privity of contract with Appellant and whether Respondent No. 1 is liable to refund the advance amount received from Appellant without impleading MTG as party of the Suit.

31. The learned District Court has, after examining the documentary and oral evidence, concluded that there was no privity of contract between Appellant and Respondent No.1 and in view of that Appellant was not entitled to recover any amount from Respondent No.1.

32. Admittedly, Mr. Jatin of PMT introduced Appellant to Respondent No. 2, who was director of Respondent No. 1 Company. Respondent No. 2 represented to Appellant that he organised international tours for large groups and MTG was the Australian counterpart of Respondent No. 1, which was managed and handled by one Mr. Sahil Nijhavan, who is brother of Respondent No. 2. Relying upon such representation, Appellant booked the tour package and made advance part payment of ₹8,00,000/- to Respondent No. 1 on 04.12.2019 for booking of air tickets.

33. Relying upon the assurances of Respondent No.1, Appellant also applied for visa and paid ₹6,30,000/-, which was not refundable.

34. Due to COVID-19 pandemic and complete lockdown, Appellant cancelled the tour on 25.03.2020. However, Respondent No. 1 failed to refund ₹8,00,000/- paid as an advance by Appellant. The learned District Court has relied upon the testimony of PW-1 to come to the conclusion that all emails were exchanged between Mr. Jatin of PMT and authorized representative/director of MTG. The learned District Court observed that Mr. Jatin of PMT was the agent of Appellant and despite that, he was neither produced as a witness nor he was party to the Suit. All emails were exchanged between Mr. Jatin of PMT and MTG at its email ID sales@marvstravelgroup.com. Further, there was no communication or exchange of emails between Mr. Jatin of PMT and Respondent No. 1. The quotation for the tour was prepared by MTG and even the invitation letter for applying visa was sent by MTG. The cancellation policy was negotiated between Mr. Jatin and MTG and communicated to Mr. Jatin that MTG would be issuing an invoice.

35. When the payment of ₹8,00,000/- was made to Respondent No. 2, MTG acknowledged the receipt of the payment, which was relied upon

by the learned District Court to observe that Respondent No. 1 as an agent of MTG had transferred the amount of ₹8,00,000/- paid by Appellant to MTG and the same had been received by MTG. The learned District Court has held that only email communication in which there was a reference to MTG was email dated 11.01.2020 from Mr. Jatin of PMT to Appellant providing the contact details of Respondent No. 2. Accordingly, the learned District Court was of the view that not a single email was exchanged between Appellant and Respondent No. 1 and all communications were with MTG. In view of the same, the learned District Court has concluded in para 19 of the impugned judgement that:

> *"19. The emails (Ex. PW1/5 colly.), quotation (Ex. PW1/2) and invitation (Ex. PWl/4) thus, when read collectively, establish the following facts:*
>
> *(i) PMT was the agent of MIs K Home Appliances;*
> *(ii) It was Jatin Chaudhary of PMT who organised the Australian Tour for M/s K Home Appliances with MTG Australia;*
> *(iii) Defendant was only the agent of MTG Australia which had no role to play except that it received payment of Rs. 8,00,000/- from M/s K Home Appliances in its account;*
> *(iv) The payment of Rs. 8,00,000/- was transferred by DW1 to MTG Australia which was duly acknowledged by MTG Australia to Jatin Chaudhary of PMT vide email dated 27.12.2019;*
> *(v) It was MTG Australia which had provided terms of cancellation policy to M/s K Home Appliances in case the cancellation was made prior to 30 days, 30-10 days and less than 10 days.*
> *(vi) The request for cancellation of tour was made by Jatin Chaudhary of PMT to MTG Australia and not to defendant."*

36. Accordingly, the learned District Court held that there was no privity of contract between Appellant and Respondent No. 1.

37. Although, the learned District Court has come to the conclusion that there was no privity of contract, the perusal of the documentary

evidence placed before the learned District Court shows extensive involvement of Respondent No. 1 in the transaction in question. Exhibit PW1/5(**Colly**) shows that the emails were addressed by Mr. Jatin of PMT to sales@marvstravelgroup.com. A careful perusal of these emails shows that the email address sales@marvstravelgroup.com was used by MTG to communicate with Mr. Jatin of PMT. All the emails placed on record show that they were copied to another email being sales.india@marvstravelgroup.com. This clearly shows that Respondent No.1 was involved as part of the transaction and email dated 11.01.2020 from Mr. Jatin to Appellant mentions the contact details of Respondent No. 2 as part of MTG.

38. Admittedly, the payment of ₹8,00,000/- was made to Respondent No. 1, which is acknowledged by MTG. The quotation for the tour was also prepared by MTG and the letter of invitation for the purpose of visa was issued by MTG and provided by Respondent No. 2 to Appellant. The documents produced at DW1/3 are tax invoices issued by Respondent No. 1 to MTG showing that an amount of ₹8,00,000/- was shown to be transferred from Respondent No. 1 to MTG for export services for the period June 2019 to November 2019. The DW1 has deposed that the money is received by Respondent No.1 were transferred to MTG on 04.12.2019 and the GST records for export invoices was produced at Ex. DW1/4. DW1 has also admitted that there was no document to show that Respondent No.1 was a BPO/Call Centre of MTG. It is admitted that the payment of ₹8,00,000/- was paid in the account of Respondent No. 1 and there was no bank statement produced by Respondent No. 1 to show that the amount of ₹8,00,000/- was transferred to the account of MTG.

39. The observation in the impugned judgement that the acknowledgment by MTG about receipt of the deposit amount shows that Respondent No. 1 was an agent of MTG and that Respondent No. 1 has transferred the amount of ₹8,00,000/- paid by Appellant to MTG and the same had been received by MTG is not borne out from the appreciation of the documentary and oral evidence.

40. In fact, DW1 has volunteered in his cross-examination to state that an amount of ₹8,00,000/- was adjusted towards an outstanding, which was to be paid by MTG to Respondent No.1. DW1 has also admitted that the fact of such adjustment was not mentioned in the written statement. DW1 has admitted in the cross-examination that the invoices produced at DW1/3 and DW1/4 do not bear the signature or acknowledgement of MTG. The DW1 has further admitted that the email communication with respect to invoice confirmation between Respondent No. 1 and MTG was not placed on record as a domain of MTG has been shut down due to the bankruptcy of MTG. DW1 has also admitted in his cross-examination that Mr. Sahil Nijhawan is brother of DW1 and was working as manager with MTG.

41. The invoices produced along with the witness statement of DW1 shows export for service from the period of June 2019 to November 2019. However, the payment of ₹8,00,000/- was made on 04.12.2019 by Appellant to Respondent No. 1. Hence, the tax invoices dated 04.12.2019 for the export services for the period of June 2019 to November 2019 do not show that the amount received from Appellant was transferred by Respondent No. 1 to MTG as an agent for this particular transaction. Further, it was admitted by DW1 during his cross-examination that the amount of ₹8,00,000/- was adjusted towards an outstanding dues which

was to be paid by MTG to Respondent No. 1. This proves that the amount of ₹8,00,000/- was appropriated by Respondent No. 1 never transferred by Respondent No. 1 after the same was paid on 04.12.2019 by Appellant. Hence, the conclusion by the learned District Court that the amount was transferred by Respondent No. 1 to MTG as an agent of MTG is not borne out from the documentary and oral evidence before the learned District Court.

42. The above analysis of documentary and oral evidence shows that Respondent No. 1 was directly involved in the transaction in question and cannot claim that it was an agent of MTG and that there was no privity of contract between Appellant and Respondent No. 1.

43. The entire relationship with Appellant was handled in a composite manner by Respondent No. 1 and MTG clearly making both Respondent No. 1 and MTG jointly and severally liable for refund of ₹8,00,000/- to Appellant.

44. As regards the quantification of the claim of Appellant, the learned District Court has held that MTG never agreed to the proposal of Mr. Jatin of PMT that entire amount of ₹8,00,000/- would be refunded to Appellant in case the tour is cancelled prior to 40 days from the date of travel. According to the cancellation policy, Appellant was entitled to refund of only 75% of the payment which would be ₹6,00,000/-.

45. It is evident from Ex.PW1/5 that the cancellation policy was discussed and it was confirmed that there would be only charge '*if hotel and activity guys charge us.*' It was also confirmed that usually in Australia strict guidelines on cancellation apply less than 15 days of travel and if the travel is cancelled prior to 30 days, it will be charged only if MTG was billed. From this email dated 18.11.2019, it is clear that

full refund ought to have been given for any cancellation prior to 30 days. Since the travel was to start on 05.06.2020 and cancellation was made on 25.03.2020, there was sufficient time of more than 30 days between the date of cancellation and the date of travel. Further, there is no averment or document on record to show that MTG was billed by any third party for this tour. In any event, no travel would have been possible due to COVID-19 pandemic lockdown, which was an act of God, and for that reason as well, Appellant was entitled to full refund of entire advance amount of ₹8,00,000/- paid to Respondent No.1.

46. As Respondent No. 1 has not been able to show the principal-agent relationship between Respondent No. 1 and MTG, Section 230 of the Indian Contract Act, 1872 would not be applicable in the facts of the present case. In absence of introduction by Respondent No. 1, Appellant had no independent relationship with MTG. Appellant relied upon Respondent No. 1 to communicate with MTG whilst Respondent No. 1 was copied on all the communications. In fact, all the documents were shared by Respondent No. 1 with Appellant and the payment of advance was also received by Respondent No. 1, which was not transferred by Respondent No. 1 to MTG and instead appropriated and adjusted by Respondent No. 1 for the dues payable by MTG. This clearly shows that Respondent No. 1 was not an agent of MTG and acted as a part of composite transaction for providing service to Appellant. Accordingly, Respondent No. 1 and MTG are jointly and severally liable for refund of the entire amount of ₹8,00,000/- paid by Appellant to Respondent No. 1.

47. As MTG is under bankruptcy, as admitted by DW1 during his cross-examination, any decree passed against MTG would not have been

enforceable in any event. Hence, Respondent No. 1 would be liable to refund the advance amount even without impleading MTG to the Suit.

48. Accordingly, Appellant is entitled to the refund of ₹8,00,000/- from Respondent No. 1 and Appellant will also be entitled to a simple interest @ 8% per annum from the date of cancellation of the tour i.e. 25.03.2020 till the date of actual payment.

49. In view of the above, the Appeal is hereby allowed against Respondent No. 1. As Respondent Nos. 2 and 3 were deleted from array of the parties in the Suit, they could not have been joined in the Appeal. Hence, this Appeal is dismissed against Respondent Nos. 2 and 3. The impugned judgment is quashed and set aside.

50. It is directed that Respondent No. 1 shall refund the sum of ₹8,00,000/- to Appellant along with a simple interest @ 8% per annum from the date of cancellation of the tour i.e. 25.03.2020, till the date of actual payment. There shall be no order as to the cost.

51. In view of the same the Suit is decreed in the aforesaid terms and let the decree sheet be drawn up accordingly.

52. Pending application(s), if any, also disposed of.

TEJAS KARIA, J

VIBHU BAKHRU, J

MAY 23, 2025/*'A'*