

IN THE INDUSTRIAL TRIBUNAL, MAHARASHTRA AT MUMBAI

REFERENCE (IT) NO. 18 OF 2014

BETWEEN

Svizera Health Care
(A Division of Maneesh Pharmaceuticals Ltd.) ...First Party

AND

Federation of Medical & Sales Representatives
Association of India ...Second Party

CORAM: R.V. UTPAT, PRESIDING OFFICER

Appearances: Shri. P.C. Pawaskar, Advocate for the First Party.
Shri. A.R. Tapole, Advocate for the Second Party.

ORDER BELOW EXH.C-12
(Passed on: 13.02.2023)

1) By this application, the first party company has prayed for deciding the additional issues as preliminary issues. It is contended that after amendment of the written statement, the first party moved application on 23.08.2022 for framing three additional issues and accordingly additional issues were framed on 31.10.2022. The first party has challenged the maintainability of the reference on various grounds such as - barring the 27 medical representatives, remaining are working outside State of Maharashtra and this Tribunal has got territorial jurisdiction only over the Mumbai district and secondly; overwhelming majority of the medical representatives are not members of the second party association, but no resolution is produced

on record showing that majority of the medical representatives have supported the demands raised by the association. According to the first party, these issues go to the root of the matter and therefore, they are required to be decided as preliminary issues.

2) The application is resisted by the second party association on the grounds that the same is devoid of merits and moved at a very late stage with the sole intent of prolonging the adjudication and defeating the purpose of the Industrial Disputes Act.

3) I have heard Ld. Advocate Shri. P.C. Pawaskar for the first party company and Ld. Advocate Shri. A.R. Tapole for the second party association.

4) Ld. Advocate for the first party company vehemently submitted that the medical sales representatives who are involved in this reference are working all over India and only 27 out of them are working in the State of Maharashtra. He further submitted that this Tribunal is exercising territorial jurisdiction over Mumbai district and it is only the national tribunal whose jurisdiction can be invoked by the second party. According to him, it is necessary to decide the additional issues as preliminary issues. In support of his submissions, he has relied upon the ruling of the Hon'ble Apex Court in **V.G. Jagdishan Vs. Indofos Industries Ltd.**, [(2022) 6 Supreme Court Cases 167].

5) Per contra, the Ld. Advocate for the second party association vehemently submitted that the demands are pending since 2011 and record makes it clear that since beginning the first party company is trying to protract the matter. He further submitted that the issues were not earlier raised and now the application for deciding preliminary issues is moved only after evidence of the second party is completed. According to him, the issues involve mixed questions of law and facts. Besides, the head office of the first party company is situated at Mumbai, the sales promotion employees do not have any local office and their appointment letters have been issued from the Mumbai office only. So also, the appropriate Government has referred this reference to this Tribunal and as such, there is no necessity to decide the additional issues as preliminary issues.

6) I have given thoughtful consideration to the submissions made on behalf of the parties. The reference is of the year 2014. It is in regard to the charter of demands of the year 2011. The first party company moved an application Exh.C-2 on 12.08.2016 for setting aside the order of “no written statement” and permission to file written statement, which came to be allowed. Thereafter issues were framed on 21.01.2019. The second party association filed affidavit of evidence on 26.08.2019 and 26.02.2020 when the matter was for cross-examination, the first party company moved application Exh.C-5 for amendment of the written statement. The said application came to be allowed on 03.04.2021. However, the written statement came to be amended as per the said order only on 11.10.2021. It is also

pertinent to note that, thereafter the matter was for cross-examination and the first party moved application for framing additional issues. On 31.10.2022 additional issues were framed and cross-examination of the witness came to be completed on the same date. It is also material to note that on 23.12.2022, the second party association closed their evidence and thereafter matter was posted at the stage of evidence of the first party company and thereafter this application for deciding preliminary issues have been moved on 23.01.2023.

7) Preliminary issues are to be decided ahead of any other issues and it was for the first party company to take appropriate steps before the completion of the evidence of the second party association. The additional issues were framed on 31.10.2022 but, this application for deciding those issues as preliminary issues was not filed promptly thereafter. Already the evidence of one side is over and the matter is for evidence of the other side. The reference is of the year 2014. It is material to note that the objection as to the territorial jurisdiction was not raised by the first party immediately on their appearance before this Tribunal. In V.G. Jagdishan Vs. Indofos Industries Ltd. (supra), the appellant was employed as a driver in Ghaziabad office and his services were terminated in Ghaziabad. It was held that merely because he shifted to Delhi after retrenchment / termination and that the head office was situated at Delhi, it could not be said that part of cause of action had arisen at Delhi. The Hon'ble Apex Court also held that when issue of territorial jurisdiction is raised, as far as possible it has to be decided as preliminary issue. Here the facts are very

different and the evidence of the second party is already over, in such a situation, the ruling is not of any assistance to the first party company. It will not be just and proper to decide the additional issues as preliminary issues. It will be in the interest of justice to take up all the issues together as the trial is at the half way mark. The application is therefore, required to be rejected. Hence, I pass the following order.

ORDER

Application is rejected.

Date: 13.02.2023.

ams/-

Sd/-
(R.V. UTPAT)
Presiding Officer
Industrial Court, Mumbai.