

Explained | Oyo-Zo dispute: On what grounds did SC arbitrator announce the award that favours Zo Rooms & what lies ahead?

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Oyo

In an unprecedented move, the arbitrator appointed by Supreme Court gave an order in the favor of Zo Rooms on the basis of circumstantial occurrences, instructing the

company to proceed to execute the definitive agreement it had signed up in 2015 with Oyo.

As per the award dated March 6, issued by Justice AM Ahmadi, the term sheet was a "binding document" and Zo Rooms did "everything within its control" to complete their obligations.

"The claimant cannot be held responsible for the acts and omissions of the respondent and/or its shareholders by virtue of which some of the obligations could not be fulfilled by the claimant," it said adding that Zo Rooms is entitled to claim for the relief of allotment of shares from Oyo.

As per the term sheet, Zo Rooms is entitled to seven percent of fully diluted shareholding of Oyo, including preferred and equity shares.

However, the five-year old document, reviewed by *Moneycontrol*, clearly mentions that the term sheet is non-binding. "The parties do not intend to be bound until they enter into definitive agreements... either party may, at any time prior to execution of such definitive agreements, unilaterally terminate all negotiations pursuant to this term sheet without any liability to the other party," it reads.

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It also states that the closing will be conditional upon fulfillment of conditions such as limited legal and financial diligence, among other things.

However, the arbitrator's award draws inference from the fact that after signing this term sheet, Zo Rooms had started performing conditions on the instructions of Oyo. Some of them include, termination of contracts with hotel properties, transfer of consumer traffic to Oyo, handing over the data base of customers and hotel owners, among other things.

According to corporate lawyers, there hasn't been a strong precedent to such an instance in India of late and at the same time given that it is a five- year-old term sheet, claiming specific

performance will not be easy.

"It is a very strong worded award that potentially goes beyond the black letter of the law and can arguably be called out as a 'spirit based' decision. The arbitral tribunal seems to have considered the larger issue at hand. That said, the award has dealt with this issue quite technically, since an arbitrator cannot make the law. It can only decide on a position," said Karan Kalra, founder of law firm Bombay Law Chambers.

He also said that it will not be easy to claim specific performance because a lot of things have happened since the time the term sheet was signed.

"For instance, if 7% then constituted 70 shares out of 1000, it is likely that it's a much smaller percentage now since Oyo has done more fundraising since then. It is likely going to be a legal nightmare if specific performance was to be enforced. However, a remedy in the form of monetary damages would be much easier to implement," he said.

In a strongly worded statement issued on March 7, Softbank-backed Oyo said it was evaluating legal remedies for challenging the award in as much as it appears to treat a

clearly non-binding term sheet as a binding document giving rights or remedies to Zostel or its shareholders for the execution of the definitive agreement.

The company stressed upon the fact how mergers and acquisition transactions take place globally through non-binding term sheets. The idea behind such documents is to initiate an exploratory process to decide on a deal.

"The arbitrator has gone on the intent of the parties and how certain actions were taken in pursuant of the term sheet such as transfer of assets, employees etc. He had proceeded to ring fence the transaction and issue an award when there is no definitive agreement between the parties," said Alipak Banerjee, Leader, International Dispute Resolution, Nishith Desai Associates.

What is the way forward?

Zo Rooms could have initiated the proceedings if Oyo had agreed to comply by the order. However, Oyo plans to challenge the same. While awards by an arbitrator are binding for both parties, if anyone chooses not to honour it, the claimant can take the award to court for an enforcement order.

So in this case, considering that Oyo is likely to challenge it, Zo can take the award to either the Supreme Court or the High Court requesting for an enforcement order. This process usually takes two to three months.

However, till then if Oyo wants to challenge the award, it can move the High Court but according to legal experts in India there are limited grounds on which a party can challenge arbitration awards.

"There are only very limited grounds in India and the rules have been made considerably stricter by the 2015 amendments to the Arbitration and Conciliation Act. It will not be an easy task to successfully challenge the award under Section 34 of the Act. Typically, now a court will not look at the merit of the case, or an erroneous application of law, or will not reappreciate the evidence. It will rather focus on the due process followed by the arbitrator to come to the conclusion and public policy considerations," said Banerjee.

Moneycontrol wrote about the arbitrator award on [March 7](#).

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