

'Term Sheet Binding, Entitles Zo to Get up to 7% Stake in Oyo'

What Happened

- NOV 2015:** Oyo, Zo Rooms initiate talks for acquisition, link term sheet
- SEPT 2016:** Oyo terminates deal to acquire Zo, claims no potential value
- JAN 2018:** Oyo files complaint against Zo founders for criminal breach of trust, cheating and misrepresentation of data
- FEB 2018:** Zo starts legal proceedings against Oyo for 'data theft' during due diligence
- OCT 2018:** SC appoints former CJI AM Ahmadi as sole arbitrator
- JAN 2020:** Zo Rooms files fresh plea in Delhi HC against Oyo restructuring its business



Tribunal rules that Oyo bound by '15 pact, Zo Rooms can claim case costs but not damages; Oyo to contest order

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Bengaluru: A court-appointed arbitrator has ruled that hospitality major Oyo is bound by the terms agreed upon with rival Zo Rooms, which required the Ritesh Agarwal-led company to cede up to 7% of its equity. The ruling delivers a major setback to Oyo, which said it will contest the order vigorously.

The verdict of the Arbitral Tribunal comprising former Chief Justice of India AM Ahmadi came on Saturday and found the term sheet—signed in November 2015 by SoftBank-backed Oyo to acquire Zo—to be a binding agreement.

Although the deal failed to fructify, the arbitrator said claimant Zo Rooms' parent, Zoestel Hospitality, was entitled to claim relief in the form of allotment of shares from the respondent, Oyo parent Oravel Stays. The order also said Zo Rooms was entitled to claim costs of its case. "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... This tribunal has held that claimant no. 1 is entitled to claim/pray for the relief of allotment of shares from the respondent to claimant nos. 2 to 17," read the order.

The arbitrator, however, struck down Zo's pleas for \$17 million in damages, a \$1 million payment to the company founders and alternative settlement of around \$85 million.

"We welcome the judgement by the tribunal," said Paavan Nanda, who cofounded Zo Rooms and led the legal process. "Beyond the monetary compensation, it was a fight for our rights and reputation." Stating that Oyo had breached the term sheet signed on November 26, 2015 by not executing the deal, Zo Rooms pointed out that it promised shareholders of Zo Rooms a 7% stake in the acquiring company.

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IL NEWS

Shiju P. Veetil, Senior Partner, IndiaLaw LLP quoted on The Economic Times Today

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ET reviewed a copy of the term sheet between Zo Rooms and Oyo, which states that total shares issued — both preference stock and equity shares — shall not exceed 7% of the fully diluted shareholding of the acquirer (Oyo).

The Gurgaon-based company strongly refuted the claims by Zo Rooms that the Arbitration Tribunal had granted any relief in terms of receiving ownership in Oyo.

Oyo was last valued at an estimated \$9 billion, when it raised ₹54 crore from Hindustan Media Ventures Ltd as part of its Series F1 round in January. This is down from a peak valuation of \$10 billion, when the company raised \$1.5 billion from founder Ritesh Agarwal, SoftBank Group and other investors in October 2019.

"The final award purports to provide Zostel a right to initiate 'appropriate proceedings' and for seeking execution of the def-

initive agreement, while no specific remedy was granted, except against their prayer for a cost, which Oyo will vehemently oppose in all avenues available under the law of the land," Oyo said in a statement.

The company added that it was "evaluating legal remedies" to challenge the tribunal's ruling, as it treated a non-binding document such as a term sheet as a binding document.

LONG LEGAL WRANGLE

The order comes after a three-year-long legal spat between Oyo and Zo Rooms, following failure of the proposed acquisition owing to issues with an early investor in Oyo — Venture Nursery. Zo then claimed it was owed a 7% stake in Oravel Stays and approached the Supreme Court for a legal remedy.

The court, in October 2018, further directed arbitration to settle the dispute and appointed Ahmad as the sole arbitrator in the pe-

tition filed by Zo Rooms.

Some legal experts are of the view that Saturday's ruling does, in fact, require Oyo to allot 7% shareholding to Zo and its shareholders, including New York-based investment firm Tiger Global and Orlos Venture Partners.

"The tribunal gave importance to the overall intent of the term sheet, rather than the written words, which stated that term sheet is non-binding," said Shiju PV, senior Partner, IndiaLaw LLP.

TWO SIDES

However, legal opinion on the matter was divided, with Nilesh Tribhuvann, managing partner at White and Brier Advocates and Solicitors, saying that "the term sheet is binding only to the parties who are signatories."

"In my opinion, the claimant ought not to have initiated arbitration proceedings against non-signatories to the term sheet.

The basic requirement of sending a notice prior to initiation of the arbit-



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ration proceedings is also not being complied with. This itself is a legal and subjective ground to vitiate the entire proceedings," he pointed out.

Zo Rooms, in its statement, said that if the arbitration order is taken into effect and its shareholders are allotted 7% in Oyo at its current valuation of \$9 billion, it would be counted as the biggest exit in India's startup ecosystem, surpassing the \$400 million Snapdeal-Freecharge deal of 2015.

Oyo, on the other hand, said Zo Rooms continues to "misrepresent and latch on to Oyo," maintaining that both parties were still in the discussion stage and no definitive agreements were finalised.