

INTERNATIONAL COMMERCIAL ARBITRATION MOOT 2020

Sponsored by
WONGPARTNERSHIP LLP

MOOT PROBLEM

WongPartnership LLP
12 Marina Boulevard Level 28
Marina Bay Financial Centre Tower 3
Singapore 018982

Disclaimer: This work is a figment of the authors' imagination. Any resemblance to any real person, entity and/or event is unintentional.

TABLE OF CONTENTS

NOTICE OF ARBITRATION.....3
CLAIMANT’S EXHIBIT 110
CLAIMANT’S EXHIBIT 213
CLAIMANT’S EXHIBIT 315
CLAIMANT’S EXHIBIT 416
CLAIMANT’S EXHIBIT 517
CLAIMANT’S EXHIBIT 619
CLAIMANT’S EXHIBIT 720
CLAIMANT’S EXHIBIT 822
RESPONSE TO NOTICE OF ARBITRATION23
RESPONDENT’S EXHIBIT 129
RESPONDENT’S EXHIBIT 230
RESPONDENT’S EXHIBIT 331
RESPONDENT’S EXHIBIT 432
RESPONDENT’S EXHIBIT 533
PROCEDURAL ORDER NO. 1.....34

**IN THE MATTER OF AN ARBITRATION UNDER THE INTERNATIONAL
ARBITRATION ACT (CAP 143A) AND THE RULES OF THE SINGAPORE
INTERNATIONAL ARBITRATION CENTRE (SIAC) 6TH EDITION, 2016**

ARB 999/20/ALG

Between

NINE-NINE DESIGN PTE LTD
(Singapore)

...Claimant

And

OTTAVIANI QUARRIES S.R.L.
(Italy)

...Respondent

NOTICE OF ARBITRATION

Solicitors for the Claimant

HOLT & PARTNERS LLP
1 Superstars Road
Happy Building Tower 1 #28-00
Singapore 123456

Dated this 9th day of January 2019.

NOTICE OF ARBITRATION

1. The Claimant, Nine-Nine Design Pte Ltd, requests that its dispute with the Respondent, Ottaviani Quarries S.R.L, as set out below, be referred to arbitration under the Arbitration Rules of the Singapore International Arbitration Centre (6th edition, 1 August 2016) (“**SIAC Rules**”) pursuant to Rule 3 therein.

I. THE PARTIES

2. The Claimant is a luxury interior solutions company incorporated and carrying on business in Singapore. It provides interior planning and design services for high-end commercial and residential projects. Its Managing Director is Mr Jake Peralta (“**Mr Peralta**”).
3. The Respondent is a company incorporated under the laws of Italy. It specialises in the mining and worldwide export of high-quality natural stone such as marble. Its Chief Executive of Sales is Mr Doug Judy (“**Mr Judy**”).

II. THE ARBITRATION CLAUSE AND GOVERNING LAW

4. The present dispute arises out of a Sale and Purchase Agreement (“**Agreement**”) concluded between the Claimant and the Respondent on 9 January 2018. [**Claimant’s Exhibit 1**] Clause 12 of the Agreement provides that the Agreement is governed by Singapore law. Clause 13 of the Agreement provides for any dispute between the Parties to be resolved by reference to arbitration under the SIAC Rules.

III. THE FACTS OF THE DISPUTE

5. The Claimant is Singapore's premier interior design solutions firm. Its projects include the planning and design of prominent luxury shopping malls, museums, and residences. Much of the Claimant's success can be attributed to its uncompromising approach to interior design – be it materials or employees, it demands only the best.
6. The use of fine Italian marble in interiors has picked up significantly in the past decade. Characterised by its prominent, consistent, and high-contrast veins, Calacatta marble is hailed as the most highly prized and is among the most sought-after natural stone in the world. Demand for the marble superstar is at an all-time high; but with it being sourced exclusively from quarries in the Apuan Alps in Northern Tuscany, Italy, its supply remains limited.
7. The Claimant, known for designing modern, opulent, yet practical solutions, frequently employs Calacatta marble in its luxury projects. In or around July 2017, the Claimant secured a tender to spearhead the interior design of a sprawling luxury development on Sentosa Cove: the Atlas Project (“**Atlas Project**”). During his search for world-class materials, Mr Peralta was introduced to the Respondent, an Italian company known for its uncompromising standards in the production of Calacatta marble. This was a philosophy with which the Claimant instantly identified.
8. On 2 January 2018, Mr Peralta met Mr Judy at the ONE^o15 on Sentosa Cove for a business luncheon. Mr Peralta introduced the Atlas Project to Mr Judy. He explained that a key theme in the Atlas Project was the liberal use of Calacatta marble as flooring in the sprawling development. Therefore, there was a need for the Claimant to secure a large supply of Calacatta marble. In addition, as the Atlas Project was intended to be a

cut above other developments, the Calacatta marble was to be customised and cut to hexagonal slabs of 90cm in length across. Mr Judy confidently informed Mr Peralta that the Respondent would be able to meet the Claimant's needs.

9. After some negotiations, parties agreed that the Respondent would ship 10 tonnes of Calacatta marble, cut to the Claimant's desired specifications, for the sum of SGD 30 million. Mr Judy also requested that the Claimant pay the Respondent a security deposit of SGD 10 million ("**Security Deposit**"). As Mr Peralta understood from his meeting with Mr Judy, the Security Deposit was to be deducted from the SGD 30 million that would become due only upon the Respondent's delivery of the 10 tonnes of Calacatta marble. [**Claimant's Exhibit 3**]
10. On 5 January 2018, the Respondent circulated a draft of the Agreement for the Claimant's review. The Claimant agreed to the draft Agreement without any amendments, and parties executed it on 9 January 2018. [**Claimant's Exhibit 2**]
11. Pursuant to Clause 4 of the Agreement, the Respondent was to deliver the 10 tonnes of Calacatta marble to the Claimant in Singapore by 9 October 2018. [**Claimant's Exhibit 1**]
12. On 7 September 2018, out of the blue, Mr Judy suddenly notified Mr Peralta that the Italian Ministry of Labour had placed mining works in the Apuan Alps on hold and had also ordered an embargo on the export of Calacatta marble mined from the quarries in the Apuan Alps. This measures were put in place for an indefinite time, pending its survey of the working conditions of these quarries. According to Mr Judy, the Respondent was thus unable to ship out the Calacatta marble for the Atlas Project that it had already mined and cut. [**Claimant's Exhibit 5**]

13. A quick Internet search by Mr Peralta revealed that the Italian Ministry of Labour had indeed put in place an embargo on the export of Calacatta marble mined from the quarries of the Apuan Alps and had also commissioned a survey of the working conditions in these quarries. Quarry-operators were informed that from 2 September 2018, they would have to suspend their operations for an indefinite time, to allow for the survey of the quarries to be carried out. However, quarry-operators could apply for a special licence to continue mining works and/or for an exception to the export embargo if they were engaged in “*mining work pursuant to international commercial agreements between a company incorporated in Italy and a company incorporated outside Italy*” – in such cases, the survey in their quarries would be expedited and measures taken to allow concurrent operation of parts of the quarries, and an exception may be granted on the export of Calacatta marble on a case-by-case basis. **[Claimant’s Exhibit 6]**

14. On 19 September 2018, Mr Judy told Mr Peralta that the Respondent had a stock of Carrara marble that was not affected by the export embargo. Carrara marble is another type of Italian marble which, while still considered to be of high quality, is regarded as inferior to Calacatta marble. Mr Judy thus said that the Respondent was willing, as a compromise, to ship at a 25% discount to the original purchase price under the Agreement, an equivalent amount of Carrara marble so that the Claimant could still receive 10 tonnes of marble by 9 October 2018. Mr Peralta, having represented to the developers that he would see to the use of Calacatta marble in all aspects of the Atlas Project, could not accept and had no choice but to refuse the Respondent’s offer. **[Claimant’s Exhibit 7]**

15. In the circumstances, no delivery was made by the Respondent on 9 October 2018.

16. On 12 October 2018, Mr Judy informed Mr Peralta that pursuant to Clause 5 of the Agreement, the Security Deposit had been used to cover the Respondent's incurred costs to-date. **[Claimant's Exhibit 8]** Mr Peralta was horrified. He had always understood that the Security Deposit would be deducted from the purchase price of the Calacatta marble only after delivery was complete. **[Claimant's Exhibit 3]** This understanding was consistent with how the parties had conducted themselves subsequent to the execution of the Agreement. **[Claimant's Exhibits 4 and 5]**
17. In the premises, the Respondent's failure to deliver the 10 tonnes of Calacatta marble by 9 October 2018 amounted to a breach of the Agreement, and the Claimant has suffered substantial loss and damage as a result thereof.
18. Further, the Respondent had unilaterally, and in further breach of the terms of the Agreement, utilised the Security Deposit without any right or basis.

IV. REQUESTED RELIEF

19. Accordingly, the Claimant requests that the Tribunal issue a final award in the following terms:
 - a. A declaration that the Respondent has breached Clause 4 of the Agreement;
 - b. A declaration that the Respondent was not entitled to utilise the Security Deposit;
 - c. An order for damages to be paid by the Respondent to the Claimant, such damages to be assessed by the Tribunal;
 - d. An order for the costs of this arbitration to be borne by the Respondent;

- e. An order for the legal costs incurred by the Claimant in this arbitration to be borne by the Respondent;
- f. Interest; and
- g. Such further or other reliefs that the Tribunal may deem fit.

V. NOMINATION OF ARBITRATOR

- 20. The Claimant nominates Ms Madeline Wuntch as its arbitrator. Ms Wuntch has consented to this nomination.

CLAIMANT'S EXHIBIT 1

SALE & PURCHASE AGREEMENT

This Agreement is concluded on this 9th day of January 2018 between the following parties:

- (1) **NINE-NINE DESIGN PTE LTD**, a company duly incorporated and validly existing under the laws of Singapore and having its principal place of business at 9 Brooklyn Road, Precinct Tower #09-00, Singapore 099990 (“**Buyer**”); and
- (2) **OTTAVIANI QUARIES S.R.L.**, a company duly incorporated and validly existing under the laws of Italy and having its principal place of business at Viale Rosa 99, 00999 Tuscany, Italy (“**Supplier**”).

RECITALS

WHEREAS:

- A. The Supplier owns quarries in the Apuan Alps, Northern Tuscany, Italy, which mine Calacatta marble, and is in the business of exporting such marble to clients all around the globe;
- B. The Buyer is a renowned, luxury interior solutions firm in Singapore engaged in the furnishing of the Atlas Project in Singapore; and
- C. The Supplier has agreed to produce and deliver to the Buyer a shipment of ten (10) tonnes of Calacatta marble, cut into hexagonal slabs of 90cm in length across, for a consideration of SGD 30 million in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises and covenants obtained herein and for other good and valuable consideration, the Parties hereto agree as follows:

1. Definitions

“**Consideration**” means the price of the Goods, SGD 30 million;

[...]

“**Goods**” means (ten) 10 tonnes of the high-grade white Calacatta marble sourced from the Pontiac Mine in the Apuan Alps, Northern Tuscany and cut into hexagonal slabs of 90cm in length across, which has been requested by the Buyer;

[...]

3. Buyer's Obligations

3.1 The Buyer shall take delivery of the Goods upon their arrival in Singapore at a port of the Seller's choosing;

[...]

3.3 The Buyer is to make payment of the Consideration no later than seven (7) working days after the receipt of the Goods.

4. Seller's Obligations

The Supplier shall make delivery of the Goods in good condition to a suitable port in Singapore of its choosing by 9 October 2018.

5. Security Deposit

In view of the substantial upfront costs the Supplier will incur in the mining and preparing of the Goods, the Buyer shall pay to the Supplier a security deposit of SGD 10 million.

[...]

10. Force Majeure

10.1 The Supplier shall be under no obligation to perform its obligations under Clause 4 herein if such performance is materially hindered, prevented, or obstructed by virtue of a Force Majeure Event (as defined in Clause 10.2 below).

10.2 The following events shall be considered Force Majeure Events, provided always that they are of an exceptional nature and remain beyond the control of the Parties, and, having arisen, the event or its consequences could not reasonably have been avoided or overcome:

- a. War
- b. Unforeseen labour disputes or quarry accidents;
- c. Acts of God;
- d. Freight embargoes or other abnormal import and export restrictions;
- e. Bans imposed by the government;
- f. Earthquakes, tidal waves, typhoons, hurricanes, storms and extreme weather conditions in the region of the Supplier's quarry which are exceptional in number and/or intensity and/or consequences; and
- g. Destruction of the Supplier's offices, or the quarry or any part thereof by fire, explosion, flood, or any causes whatsoever.

[...]

12. Governing Law

This Agreement is governed by the laws of Singapore.

13. Dispute Resolution

Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Singapore. The Tribunal shall consist of 3 arbitrators. The language of the arbitration shall be English.

CLAIMANT'S EXHIBIT 2

Date: 9 January 2018
Time: 10:46 PM SGT (GMT +08:00)
From: jakeperalta@ninenine.com
To: dougjudy@ottavianiquarries.com

RE: RE: RE: RE: Sale and Purchase Agreement
Attachment(s): **9 January 2018 SPA signature page_executed.pdf**

Dear Doug,

Looks good. I've only skimmed the contract (as you know, I am always busy!), but my legal team says everything looks kosher and I trust them. A scanned copy of the signed agreement is attached; I've also arranged for it to be couriered to you and my assistant will send you the details.

Thanks Partner! See you in February.

Cheers,
Jake

Date: 5 January 2018
Time: 8:42 AM SGT (GMT +0800)
From: dougjudy@ottavianiquarries.com
To: jakeperalta@ninenine.com

RE: RE: RE: Sale and Purchase Agreement
Attachment(s): **9 January 2018 SPA.pdf**

Dear Jake,

As promised, I attach a draft of the sale and purchase agreement. It reflects what we agreed upon on 2 Jan, particularly the S\$10 mil security deposit that my management insists on to cover our upfront costs in mining and cutting the marble to the specifications you asked for. As you know, these are substantial. If all is good with you (and your legal department), could you sign and execute the agreement and send it back to me safely?

Hope to hear from you soon, Partner.

Regards,
Doug

Date: 3 January 2018
Time: 6:07 PM SGT (GMT +08:00)
From: dougjudy@ottavianiquarries.com
To: jakeperalta@ninenine.com

RE: RE: Sale and Purchase Agreement

My pleasure, Jake. Don't you worry about the draft agreement – I've got my legal team working round the clock! As for celebrations, perhaps I could host you sometime in February. We could enjoy a night of fine Tuscan cuisine, paired with the wonderful Antinori Tignanello 2016.

Regards,
Doug

Date: 3 January 2018
Time: 11:02 AM SGT (GMT +08:00)
From: jakeperalta@ninenine.com
To: dougjudy@ottavianiquarries.com

RE: Sale and Purchase Agreement

Dear Doug,

Thanks for meeting me yesterday, Partner! Glad you agreed to help us out with your amazing Calacatta Marble, which is going to be a hallmark of the Atlas Project! Thanks for offering to draft the agreement – we look forward to receiving it.

It was great hearing your thoughts on the recent labour issues in the Italian mining industry and how you expect the industry to change – consider me enlightened! Would love to pick up where we left off, when you next swing by Singapore. This time, drinks are on me – let me know if you prefer a Sassicaia 1995 or an Antinori Tignanello 2016! We should definitely celebrate this exhilarating collaboration over a good bottle.

Cheers,
Jake

CLAIMANT'S EXHIBIT 3

Date: 11 January 2018
Time: 9:21 AM SGT (GMT +08:00)
From: jakeperalta@ninenine.com
To: michaelhitchcock@ninenine.com; normscully@ninenine.com

RE: Update on Ottaviani Quarries

Hi Michael, Norm,

To update, as discussed at our previous board of directors meeting, I have signed, on behalf of our company, the sale and purchase agreement with Ottaviani Quarries.

It was a tough negotiation and I couldn't get Doug to budge on the requirement of the security deposit. \$10mil is not a small sum, but given the staggered payment we're expecting from the developers and the profits that the Atlas Project will surely bring in, this shouldn't be a problem. In any case, I understand that the \$10mil is only to reassure Ottoviani's management that we are good for our money, and will be deducted from the \$30mil (which is quite a steal!) due upon delivery of the marble.

I'll get our finance team to follow up accordingly.

Cheers,
Jake

CLAIMANT'S EXHIBIT 4

Date: 5 March 2018
Time: 11:05 AM SGT (GMT +08:00)
From: jakeperalta@ninenine.com
To: dougjudy@ottavianiquarries.com

RE: RE: Security Deposit

Dear Doug,

Sorry for the delay. We've just gotten the necessary approvals and have made a telegraphic transfer of the S\$10 mil – it should hit your accounts soon.

A piece of good news – we have just received the first tranche of payment from the developers! Rest assured, we'll have the remaining S\$20mil by the time the marble is delivered.

Let's catch up soon.

Cheers,
Jake

Date: 3 March 2018
Time: 09:19 PM SGT (GMT +08:00)
From: dougjudy@ottavianiquarries.com
To: jakeperalta@ninenine.com

RE: Security Deposit

Dear Jake,

Sorry to chase, but I wanted to check on when payment of the security deposit will be made? We have started the mining works on our end and are incurring substantial costs for this.

Regards,
Doug

CLAIMANT'S EXHIBIT 5

Date: 8 September 2018
Time: 11:08 AM SGT (GMT +08:00)
From: dougjudy@ottavianiquarries.com
To: jakeperalta@ninenine.com

RE: RE: RE: Sorry

Let me discuss with my management and I will see what I can do.

Regards,
Doug

Date: 8 September 2018
Time: 08:33 AM SGT (GMT +08:00)
From: jakeperalta@ninenine.com
To: dougjudy@ottavianiquarries.com

RE: RE: Sorry

Doug,

A delay of a few months is unacceptable. We have our own deadlines to meet.

I see there's the option of applying for a special licence from the Italian Ministry of Labour to continue mining works and for a special exception to the export embargo since our Sale and Purchase Agreement is considered as an "*international commercial agreement*". Please do everything you can to get this sorted out.

If you can't solve this and will not be able to complete the delivery by 9 October 2018, then there is no reason for you to continue holding on to the security deposit. I'll need the security deposit back immediately so I can buy from alternative sources.

Jake

Date: 7 September 2018
Time: 07:39 PM SGT (GMT +08:00)
From: dougjudy@ottavianiquarries.com
To: jakeperalta@ninenine.com

RE: Sorry

Dear Jake,

Something terrible has happened. It is with great regret that I inform you that operations at our quarry in the Apuan Alps are to be halted according to instructions from the Italian Ministry of Labour. There's also an export embargo on the Calacatta marble mined from the Apuan Alps.

I wrote to the Ministry to inquire further on 4 September – they have not replied me and are not picking up my calls! I will let you know when we get a response.

This is all out of our hands at the moment, but I can assure you we are working at it non-stop and trying our best to see what can be done. In the meantime, it seems highly unlikely that we can make the shipment in time on 9 October 2018. Given these unfortunate events, would it be possible to delay shipment for a few months?

Let's discuss this over a call please, if you're free.

Regards,
Doug

CLAIMANT'S EXHIBIT 6

Printout of Boogle Search results for “Italy marble suspension” dated 4 September 2018

[...]

Italian government announces temporary suspension on marble mining operations | VVC News

1 September 2018 | In the wake of the tragic accident in the Vultura Quarry which killed 25 workers and injured 42 others, it appears that the Italian government is finally listening to the steady voice of dissent led by the Italian Miners' Union on the poor working conditions in the marble quarries in Apuan Alps. The Italian government has today announced a suspension of operations for quarries that mine the precious stone for an indefinite period of time, in order to assess the working conditions of these quarries, with such suspension to take effect from tomorrow, 2 September 2018. Exports of Calacatta marble, which is the only type of marble found in the Apuan Alps, have also been temporarily put on hold, leaving Calacatta marble export companies with more than just a minor problem [...]

Anticipating concerns from quarry-owners, Italian government announces special dispensation for exporters | CMM Breaking News

3 September 2018 | Alongside a surprise announcement that mining operations in Italy's famous Apuan Alps would need to undergo a suspension of operations for an indefinite period of time, the government has offered quarry-owners, trapped between a rock and a hard place, a possible way out of their quandary. Those engaged in mining work pursuant to international commercial agreements between a company incorporated in Italy and a company incorporated outside Italy may apply for an expedited survey process, in order to allow parts of their quarries to continue operating while the survey is conducted. Also open to quarry-owners is the option to seek a special exception for the export of Calacatta marble already sitting in their warehouses, which may be granted on a case-by-case basis [...]

[...]

CLAIMANT'S EXHIBIT 7

Date: 1 October 2018
Time: 11:48 PM SGT (GMT +08:00)
From: dougjudy@ottavianiquarries.com
To: jakeperalta@ninenine.com

RE: RE: RE: RE: RE: Alternative?

Jake,

The ban on mining and exports is clearly a force majeure event.

Please give me a call so we can discuss this without having to resort to legal means which would be a waste of money for both our companies.

Doug

Date: 1 October 2018
Time: 5:12 PM SGT (GMT +08:00)
From: dougjudy@ottavianiquarries.com
To: jakeperalta@ninenine.com

RE: RE: RE: RE: Alternative?

Doug,

I am very disappointed in the way you and your company has handled this fiasco.

Take notice that if you do not deliver the marble by 9 October 2018, Nine-Nine will consider it a breach of the Sale and Purchase Agreement and will be taking legal steps.

All our rights are reserved.

Jake

Date: 1 October 2018
Time: 07:15 AM SGT (GMT +08:00)
From: dougjudy@ottavianiquarries.com
To: jakeperalta@ninenine.com

RE: RE: RE: Alternative?

Jake,

I have tried my best the past few days but there's just no practical solution to the restriction imposed by the government. I did in fact offer you an alternative but unfortunately, you chose not to take me up on my offer. In the circumstances, we won't be able to deliver the Calacatta marble to you by 9 October 2018.

Doug

Date: 19 September 2018
Time: 09:09 PM SGT (GMT +08:00)
From: jakeperalta@ninenine.com
To: dougjudy@ottavianiquarries.com

RE: RE: Alternative?

Carrara marble is good but not what we agreed on. You know what the Atlas Project and I expect – Calacatta marble and nothing else.

Do you have better solutions? If not, I really need the security deposit back.

Jake

Date: 19 September 2018
Time: 07:30 PM SGT (GMT +08:00)
From: dougjudy@ottavianiquarries.com
To: jakeperalta@ninenine.com

RE: Alternative?

Jake,

I know this is not what you had in mind, but here is what I can give to you by 9 October 2018, and I am sorry to say that this is the best that I am able to offer: Carrara marble – I have sufficient stock of this. It is fancy enough for the Atlas Project, especially if you are planning to use it for flooring.

Based on my conversations with fellow marble suppliers, the application for the special licence will take at least a few months to process and no one can say for sure when the special licence will be granted, if at all. I have also spoken to my contacts in the Ministry, but they likewise are not able to give me a more definite answer, as they have been swamped with applications.

This is really the best option, and I strongly urge you to consider it. If you are okay with this, I am willing to ship an equivalent amount of Carrara marble to you at a 25% discount off the original contract price. Let me know.

Doug

CLAIMANT'S EXHIBIT 8

Date: 12 October 2018
Time: 10:20 AM SGT (GMT +08:00)
From: jakeperalta@ninenine.com
To: dougjudy@ottaviani Quarries.com

RE: RE: Security Deposit

WHAT ARE YOU TALKING ABOUT??? Not only did you not deliver the marble as promised, you want me to pay you for your non-delivery as well?! This is ridiculous.

I don't care that the Italian government made things difficult. I am DEMANDING that you return the \$10mil. As we had discussed on 2 Jan, that sum was NOT meant to be touched until delivery of the marble is completed!!!

Date: 12 October 2018
Time: 09:00 AM SGT (GMT +08:00)
From: dougjudy@ottaviani Quarries.com
To: jakeperalta@ninenine.com

RE: Security Deposit

Jake,

I should let you know that my management has decided to use the S\$10 million security deposit to offset part of our costs in the mining and cutting of the Calacatta marble to your specifications. Given the unique dimensions of the marble slabs you have asked for, it's practically impossible that we can sell them off to any other customers. As a gesture of goodwill, we are happy to let the losses lie where they fall and write off the rest of the costs that we have incurred.

The timing of the government ban was very unfortunate and we're sorry we couldn't help you in the Atlas Project.

Regards,
Doug

**IN THE MATTER OF AN ARBITRATION UNDER THE INTERNATIONAL
ARBITRATION ACT (CAP 143A) AND THE RULES OF THE SINGAPORE
INTERNATIONAL ARBITRATION CENTRE (SIAC) 6TH EDITION, 2016**

ARB 999/20/ALG

Between

NINE-NINE DESIGN PTE LTD
(Singapore)

... Claimant

And

OTTAVIANI QUARRIES S.R.L.
(Italy)

... Respondent

RESPONSE TO NOTICE OF ARBITRATION

Solicitors for the Respondent

DIAZ & SANTIAGO LLC
Via Sant'Andrea 10
20121 Milan, Italy

Dated this 23rd day of January 2019.

RESPONSE TO NOTICE OF ARBITRATION

I. INTRODUCTION

1. This is the Respondent's Response to the Claimant's Notice of Arbitration dated 9 January 2019 ("NOA").
2. The Respondent denies all claims made by the Claimant in the NOA. The Respondent further denies that the Claimant is entitled to any of the reliefs sought in the NOA.

II. FACTUAL BACKGROUND

3. The Claimant's account is a distortion of the true facts. The NOA mischievously omits key facts of the present dispute. The Respondent will endeavour to correct such omissions, in order to provide an accurate picture of the facts of this dispute to the Tribunal.
4. At a business luncheon on 2 January 2018, Mr Judy was introduced to the Claimant's interior design plans for the Atlas Project. Mr Judy was surprised at the audacity of the Calacatta marble flooring plan in such a sprawling development—the use of Calacatta marble had, historically, been mostly decorative and such use would surely result in astronomical costs. In addition, Mr Peralta had insisted that the Calacatta marble be cut in hexagonal slabs of 90cm in length across, so that the Atlas Project would be able to showcase Calacatta marble in way that "*the world has never seen before*". Mr Judy informed Mr Peralta that given the delicateness of the Calacatta marble, once it was cut according to these unusual dimensions and in the hexagonal shape, it would not be possible to cut the Calacatta marble any further or to repurpose the Calacatta marble for other purposes. **[Respondent's Exhibit 1]**

5. Given this, and in spite of Mr Peralta's assurances that cost is not a concern for the Atlas Project, Mr Judy was hesitant to commit without some form of security. It would have been impossible and commercially unsound for the Respondent to take on such a risk without some way of securing its costs position, particularly given the specific requirements of the marble slabs sought by the Claimant which would render them unsaleable to other customers.
6. Accordingly, Mr Judy proposed, and Mr Peralta agreed, that the Claimant pay a Security Deposit in the sum of SGD 10 million for the Respondent's protection ("**Security Deposit**"). This Security Deposit was intended by both parties to cover the significant costs that the Respondent would have to incur to secure the huge quantity of Calacatta marble for the Claimant. [**Respondent's Exhibit 1**]
7. On 15 July 2018, a massive accident occurred at the Vultura Quarry, one of the most prominent quarries in the Apuan Alps, causing the deaths of 25 miners and 42 others to be injured. While the official cause of the accident remained unknown, word within the mining industry was that this was due to the poor safety conditions in the Vultura Quarry. [**Respondent's Exhibit 3**] This accident sparked an unprecedented labour strike, in which miners nationwide refused to carry out any further works until the government authorities took steps to address the harsh working conditions in the Apuan Alps. [**Respondent's Exhibit 4**] Pressured, the Italian Ministry of Labour had no choice but to suspend mining works in the Apuan Alps while it conducted a survey of the working conditions of the quarries. There was no indication on when the survey would be completed. To further demonstrate its commitment to the cause, the Italian government also put in place an embargo on the export of marble mined from the Apuan Alps until the conclusion of the survey. [**Claimant's Exhibit 6**]

8. By way of background, the quarries in the Apuan Alps are notorious for its extreme terrains and harsh working conditions. The absence of any labour or safety laws regulating mining in the Apuan Alps means that the miners have to work long hours in dangerous conditions. Since end-2017, the Italian Miners' Union has become increasingly vocal about the far from satisfactory conditions which the miners in the Apuan Alps are expected to work in, and has pushed the government authorities to implement safety and welfare measures to guarantee the safety of the miners. **[Respondent's Exhibit 2]** The accident in the Vultura Quarry was therefore the straw that broke the camel's back.
9. On 4 September 2018, Mr Judy wrote in to the Ministry of Labour to enquire about the possibility of and procedure for applying for the special licence to carry on mining works and for the exception to the embargo on exports. Receiving no reply, Mr Judy followed up with calls on 6 September 2018 and 10 September 2018. Concurrently, on 7 September 2018, Mr Judy informed Mr Peralta of this development and of his efforts to apply for the special licence and the exception. **[Claimant's Exhibit 5]**
10. Mr Judy had also spoken to fellow marble suppliers in the Apuan Alps on this issue, most of whom shared that the applications for the special licence and exception would likely take at least a few months and it is presently uncertain what criteria the Ministry would look at when deciding whether to grant the special licence and/or the exception. This was confirmed on 10 September 2018 when Mr Judy finally got through to a senior member of the staff from the Ministry of Labour, who informed Mr Judy that the Ministry had been swamped with a large number of licence applications and it is unclear when such applications would be successfully processed. **[Respondent's Exhibit 5]**

11. Despite this, the Respondent tried its best to find solutions to the problem. The only practicable solution was the use of Carrara marble as an alternative to Calacatta marble, as Carrara marble was not affected by the ban and export embargo and the Respondent had a ready stock of this. The Respondent considered this a viable and reasonable alternative, and was prepared to offer a 25% discount in recognition of the difference in quality between the two types of marble. Unfortunately, the Claimant was uncompromising and dismissed this proposal. **[Claimant's Exhibit 7]**

12. On 1 October 2018, Mr Judy informed Mr Peralta that the Respondent would not be able to deliver the Calacatta marble by 9 October 2018 as a result of the government ban on mining and the export of Calacatta marble from the Apuan Alps. Mr Peralta replied, stating that the Claimant would treat non-delivery as a breach of the Agreement. In response, Mr Judy stated that this constituted a Force Majeure Event under Clause 10.2 of the Agreement. **[Claimant's Exhibit 7]**

13. Eventually, on 12 October 2018, the Respondent decided to use the Security Deposit to offset the significant costs it had incurred in mining and cutting the Calacatta marble. **[Claimant's Exhibit 8]** This was in line with parties' discussions at the meeting on 2 January 2018 where it was agreed that the Respondent needed some security for the substantial costs it would be incurring upfront. **[Respondent's Exhibit 1]** and with the express wording of Clause 5 of the Agreement.

VI. REQUESTED RELIEF

21. For the aforementioned reasons, the Respondent requests that the Tribunal issue a final award in the following terms:

- a. A declaration that the Italian Ministry of Labour placing mining works in the Apuan Alps on hold and placing an embargo on the export of marble for an indefinite time was a Force Majeure Event as set out in Clause 10 of the Agreement;
- b. A declaration that by virtue of the Force Majeure Event, the Respondent did not breach Clause 4 of the Agreement;
- c. A declaration that the Respondent was entitled to utilise the Security Deposit to cover its costs in mining and cutting the Calacatta marble to the Claimant's specifications;
- d. An order for costs of the arbitration to be borne by the Claimant;
- e. An order for the legal costs incurred by the Respondent in this arbitration to be borne by the Claimant;
- f. Interest; and
- g. Such further or other reliefs that the Tribunal may deem fit.

III. NOMINATION OF ARBITRATOR

14. The Respondent nominates Mr Adrian Pimento as its arbitrator. Mr Pimento has consented to this nomination.

RESPONDENT'S EXHIBIT 1

Contemporaneous Minutes of Meeting taken by Mr Judy, later circulated to management

Date: 2 January 2018, 12.30pm SGT

Venue: ONE°15 on Sentosa Cove

Attendees: Jake Peralta (Nine-Nine Design), Doug Judy

[...]

- Jake told me about the Atlas Project – very ambitious use of Calacatta marble, cut into a unique shape of hexagonal slabs (90cm each side) for the whole flooring; Jake said that costs are not an issue for Nine-Nine or Atlas.
- But very large cost for Ottaviani – especially since once the slabs are cut in this way they cannot be cut further / repurposed for other uses.
- I told Jake we need protection, especially for this Atlas Project, as the volume of the marble to be supplied is very large and the upfront costs to be incurred very high. The costs Ottaviani would have to incur just to mobilise the machinery and labour before the actual mining works commenced is substantial. No way that my management would agree to the contract, unless it had some form of guarantee that it would at least be able to recover these upfront costs.
- Jake said that Nine-Nine is only able to pay after money comes in from developers. Nine-Nine is a young and growing company with longer term projects – cash flow not that great yet.
- I suggested Nine-Nine pay S\$10 mil to us in advance – this will be used to cover our substantial upfront costs.
- I told him Ottaviani will only feel safe if we have some insurance at every stage of the entire contract. Jake said he understood Ottaviani's concern. He agreed to pay the security deposit.
- We agreed that Ottaviani will draft the contract for Nine-Nine's review.
- Talked briefly about the latest developments in Italy's mining industry. Jake mentioned he has heard about unhappiness amongst miners in the Calacatta marble sector. We laughed and said it is a good thing we will be trying to get our hands on as much Calacatta as we can now. On a serious note, I mentioned that unless there are proper regulations in place, tough to see any meaningful changes in the industry and this may create problems in the future.

RESPONDENT'S EXHIBIT 2

THE ITALIAN TIMES

NOT SO MARBLE-LOUS AFTER ALL: DISCONTENTED MINERS IN THE APUAN ALPS VOICE THEIR CONCERNS

15 December 2017 | Gina Linetti (Politics Desk)

On the eve of World Marble Day on 14 December 2017, the Italian Miners' Union published a strongly-worded open letter to the Ministry of Labour voicing their discontent as to poor working conditions in the Apuan Alps – Italy's treasure trove of fine, world-acclaimed Calacatta marble. This letter comes as the latest development in long-simmering tensions between the Italian Miners' Union and the Ministry of Labour, and economic analysts have cautioned that if ill-handled, tensions could well come to a head and result in a possible labour strike.

In their open letter, the Italian Miners' Union pointed out recurring issues with having to work long hours in order to meet the huge demand for marble from the region, especially the unique Calacatta marble, the global obsession with which has forced miners to extract large quantities of the stone over very short periods of time in order to meet tight delivery timelines stipulated by international commercial contracts for the supply of Calacatta marble. Miners also voiced concerns as to poor safety conditions in the mines, which had resulted in a number of accidents the deaths of more than 15 miners in the past year.

The Italian Times has reached out to the Ministry of Labour for comment, but has not heard from the Ministry at the time of this publication.

RESPONDENT'S EXHIBIT 3

CMM BREAKING NEWS

ITALIAN MARBLE MINERS HOLD VIGIL FOR MINERS KILLED IN MINE SHAFT COLLAPSE IN APUAN ALPS

16 July 2018 / Theodore Wells (Political Analyst)

Italian marble miners from around the Apuan Alps region – Italy's 'marble belt' – have come together to hold a silent vigil at the entrance to the Vultura Quarry, one of the region's top producers of fine Calacatta marble. This comes following the occurrence of a major mining accident earlier this afternoon, where the rope tethered to a heavy mining skip broke and sent it plummeting down a mining shaft in the quarry, resulting in 25 deaths and 42 injured.

Early reports have attributed the incident as an unlucky accident, but more vocal critics in the mining community have pointed out that given the poor safety standards and history of accidents in the Apuan Alps mines in general (and the Vultura Quarry in particular), this was a catastrophe that was always waiting to happen.

The working conditions of Italian marble miners has always been a source of controversy, with the release of an open letter by the Italian Miners' Union late last year, sparking widespread and intensified debate in recent months. Despite reassurances that the government has been looking into this, insiders say that little to nothing has actually been done to improve the working conditions of the workers.

"It is a shame," said one of the miners at this evening's vigil, who declined to be named. "This is not the first time we have had a mining accident, but still nobody cares, nobody tries to help us bring change."

Said another unnamed miner at the vigil, who had lost his brother in the Vultura Quarry accident: "All these big companies are ever concerned about is the financial gain they can make from our marble. The human cost will never mean anything to them unless it also costs them financially."

Analysts have long cautioned the Italian government to take the issue of miners' working conditions seriously, to avoid tensions escalating into drastic action.

RESPONDENT'S EXHIBIT 4

THE ITALIAN TIMES

BREAKING: LARGEST LABOUR STRIKE IN NATIONAL HISTORY AS MARBLE MINERS PROTEST POOR WORKING CONDITIONS

9 August 2018 / Gina Linetti (Politics Desk)

After months of tensions relating to the working conditions of quarries in the Apuan Alps following the latest accident in the Vultura Quarry, things have finally come to a head, as we head into the third day of what is shaping up to be the largest labour strike in recent Italian history.

The strike began three days ago on 6 August 2018, when miners at the newly-restored Vultura Quarry refused to come into work. This followed the tragic mine shaft accident that occurred mid-last month at the Vultura Quarry which had resulted in 25 miners dead and another 42 injured. When it transpired that no further precautions had been taken to secure the Vultura Quarry after it re-opened following the accident, all of the miners staged a walkout, refusing to work in the quarry until action was taken to address their poor working conditions.

The actions of the Vultura Quarry miners have since inspired many others to join the strike and put down their mining tools. This includes the mining teams working in the two biggest mines in the region: the Pontiac Mine and the Mlepnos Quarry. Entering into the third day of the labour strike, it seems that marble production has been brought virtually to a standstill. Already, quarry-owners have reported major disruptions meeting their deadlines under mining supply contracts, which are often tight with little room for delay.

Neither the Italian Miners' Union nor the Ministry of Labour have commented on the situation yet. More to come.

RESPONDENT'S EXHIBIT 5

Date: 10 September 2018

Time: 04:52 PM SGT (GMT +08:00)

From: dougjudy@ottavianiquarries.com

To: georgejudy@ottavianiquarries.com; trudyjudy@ottavianiquarries.com

RE: Update on marble ban

Hi George, Trudy,

Just to update, I finally got through to a staff member at the Ministry of Labour. She echoed what I've been hearing from the other marble suppliers – they'll be faced with a lot of applications and it'll take some time to process the applications for the special licence and/or the exception.

If you have any ideas on how to get out of this sticky situation, I'm all ears. In the meantime, I'll keep brainstorming for a solution.

Regards,
Doug

**SIAC ARBITRATION NO. 999 OF 2019 (ARB 999/20/ALG)
IN THE MATTER OF AN ARBITRATION BETWEEN NINE-NINE PTE LTD
(CLAIMANT) AND OTTAVIANI QUARRIES S.R.L. (RESPONDENT)**

PROCEDURAL ORDER NO. 1

1. Pursuant to Rule 19.1 of the SIAC Rules 2016, the Tribunal hereby makes the following orders.
2. On 13 January 2020, the parties to this arbitration, through their counsel, and the Tribunal had a conference call to determine the procedure that would be followed in this arbitration.
3. Pursuant to the conference call, the parties have agreed that at this stage of the proceedings, the Tribunal will first hear the parties' arguments on the following issues:
 - (a) **Whether the Respondent is entitled to avail itself of Clause 10 of the Sale & Purchase Agreement;**
 - (b) **Whether the Respondent is entitled to use the Security Deposit to cover its costs pursuant to Clause 5 of the Agreement.**
4. The Tribunal will determine all other issues at a later date.
5. A memorandum setting out arguments in support of either the Claimant's or the Respondent's position on the issues above must be submitted by 10 February 2020, 12pm via email. Oral arguments will be held in the evening of 12 February 2020.

6. No party should raise any issue other than those at paragraph 3 above in their memorandum or at the oral hearing.

Dated this the 29th day of January 2020

TERENCE JEFFORDS

Chairman