

October 30, 2014

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**BY EMAIL**

Hon. Erin M. Wirth  
Administrative Law Judge  
Federal Maritime Commission  
800 North Capitol Street, N.W  
Washington, D.C. 20573

Re: *Smartstone Private Limited v. General Noli USA, Inc.  
and Savino Del Bene Freight Forwarders (India) Pvt Ltd*  
Docket No. 1946(F)

Dear Administrative Law Judge Wirth:

Pursuant to the Initial Order dated September 30, 2014, claimant Smartstone Private Limited (“Smartstone”), and respondents General Noli USA, Inc. (“General Noli”), and Savino Del Bene Freight Forwarders (India) Pvt. Ltd. (“SDB”) (collectively, “Respondents”) respectfully submit this joint status report. Respondents reserve all rights and defenses, including their objection to the Federal Maritime Commission’s jurisdiction, none of which is waived.

**1. Status of Discovery**

**Smartstone contends:**

Clyde & Co. US LLP attorneys of respondent General Noli USA INC requested claimant Smartstone Pvt Ltd by email message dated 27<sup>th</sup> October 2014 to produce and permit the inspection and copying of the various documents, writings and things at the offices of Clyde & Co US LLP, The Chrysler Building, 405 Lexington Avenue, 16<sup>th</sup> Floor, New York, New York 10174, on or before October 30, 2014. The submission of Claimant Smartstone Pvt Ltd in this regards is as under :-

- (a) The Claimant is in India and the time provided by and place mentioned by Clyde & Co. US LLP is totally unjustified and unreasonable.
- (b) The various documents sought for are from the period from September 01, 2011 to date which is irrelevant to the complain as the shipment was made in the month of January 2012.
- (c) The List of employees and officers of Smartstone during the period from September 01, 2011 to date sought for is also totally irrelevant to the complaint.

(d) The various documents sought for are repetition. All necessary and relevant documents has already been submitted at the time of filling the complain with the Federal Maritime Commission.

Claimant Smartstone further contends:

All documents set forth in the request of Clyde & Co. US LLP attorneys of respondents General Noli USA Inc are irrelevant and the factual circumstances surrounding Smartstone allegations are absolutely clear as per complain filled by Smartstone and documents submitted with the complain.

Request of Clyde & Co. US LLP attorneys of respondents General Noli USA Inc for the list of employees and officers of Smartstone during the period from 01<sup>st</sup> October 2011 to date is also irrelevant as the complain was signed by Director of Smartstone Pvt Ltd duly qualified representative.

Smartstone has clearly shown that it is being represented by its Director and it satisfies the regulation governing who may make an appearance on behalf of Smartstone.

Smartstone can submit authenticated copies once again if required

Smartstone very categorically objects following mentioned by Clyde & Co. US LLP attorneys of respondents General Noli USA Inc “On information and belief, Smartstone is actively pursuing payment of the same shipment at a price discounted due to its own error. Such a scenario allows for Smartstone to be unjustly enriched by its own error”

Smartstone is not pursuing payment of the shipment at a price discounted due to its own error. Smartstone did not commit any error in making the shipment. In fact price was discounted by Smartstone in order to settle the issue due to error committed by the respondents General Noli USA Inc by delivering the cargo without collecting to order negotiable original Bill of Lading by violating all International Laws, Business norms and ethics and related sections of shipping act due to which buyer did not pay our Invoice amount USD 22191.07. But inspite of Smartstone making efforts by offering the discount to settle the issue buyer did not pay anything.

Respondents contend:

General Noli served the First Request for Production of Documents pursuant to the Initial Order, which states in relevant part: “if a party is unable to obtain information from another party by voluntary means, on or before October 30, 2014, the party seeking the information may file a motion requesting that the administrative law judge require submission of the information pursuant to Rule 314.” General Noli would consent to extend the time for an additional brief period for Smartstone to produce the requested documents provided Smartstone complies with the discovery requests. Due to Smartstone’s response set forth above, General Noli will be filing a motion requesting that Administrative Law Judge Wirth require submission of the information pursuant to Rule 314.

General Noli contends that all documents set forth in its request are relevant to the instant action as they specifically require documents related to the shipment at issue and the personnel and communications that will clarify the factual circumstances surrounding Smartstone's allegations.

General Noli's request for the list of employees and officers of Smartstone during the period from September 1, 2011 to date is directly relevant to the complaint because under the FMC regulations,

"A party may appear in person or by an officer, partner, or regular employee of the party, or by or with counsel or other duly qualified representative, in any proceeding under the rules in this part. Any party or his or her representative may testify, produce and examine witnesses, and be heard upon brief and at oral argument if oral argument is granted."

46 C.F.R. 502.21(a). Smartstone has failed to show just who is representing Smartstone and whether that person satisfies the regulation governing who may make an appearance on behalf of Smartstone.

Additionally, Smartstone's submissions with its claim are insufficient for the proper adjudication of this controversy as the submissions are unauthenticated and the quality of the copies poor. Moreover, the claim contained no communications between the parties involved in the subject shipment until two years after the shipment occurred. On information and belief, Smartstone is actively pursuing payment of the same shipment at a price discounted due to its own error. Such a scenario allows for Smartstone to be unjustly enriched by its own error. Accordingly, General Noli is filing a motion for discovery for all previous documents requested pursuant to the Initial Order.

## **2. Necessity of an Oral Hearing**

### Smartstone contends:

Smartstone contends that an oral hearing in Washington DC is not necessary at all.

Claimant Smartstone further contends:

Record specifically relating to Smartstone's handling and shipment of the cargo at issue and damages incurred by Smartstone is very much clear from the complain and documents submitted with the complain.

Smartstone has submitted E-mail message dated 20<sup>th</sup> May 2014 received from Savino Del Bene and General Noli confirming delivery of the container to the buyer on 28<sup>th</sup> February 2012 and Copy of return advice dated 28<sup>th</sup> June 2012 received by our Bankers from J P Morgan Chase Bank, buyer's bank for return of documents as a proof of non payments

Personal hearing is not necessary to determine the claim. It can be determined on the basis of documents already submitted with the complain.

Respondents contend:

General Noli contends that an oral hearing is necessary for the reasons set forth below. General Noli further contends that the hearing would take no longer than one day.

First, if Smartstone refuses to engage in discovery, General Noli requests the opportunity to raise issues and develop a record specifically relating to Smartstone's handling and shipment of the cargo at issue, which upon information and belief was not what it purported to be, and what damages, if any, Smartstone claims to have incurred, which General Noli denies.

Second, Smartstone's claim fails to show (1) that any cargo was delivered without the bills of lading, and (2) that the cargo was loaded in good order and condition. Oral argument provides the opportunity to address the fact issues in respect to the alleged delivery of the subject cargo and the alleged non-payment for the subject cargo.

Accordingly, oral argument would assist the proceeding by allowing a full and frank opportunity to determine the claim, and Respondents restate their request.

### **3. Settlement Negotiations**

Smartstone contends that no settlement was discussed. Respondents neither General Noli USA INC nor Savino Del Bene Forwarders (India) Pvt Ltd initiated any discussion regarding settlement.

Respondents contend that Smartstone has not proposed any settlement discussions.

Respectfully,



Dated: New York, New York  
October 30, 2014

**CLYDE & CO US LLP**

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