

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

---

**DOCKET NO. 1946(F)**

---

**SMARTSTONE PRIVATE LIMITED**

**V.**

**GENERAL NOLI USA, INC and**

**SAVINO DEL BENE FREIGHT FORWARDERS (INDIA) PVT LTD**

---

**FEBRUARY 27, 2015, PROCEDURAL ORDER, ATTACHMENT A  
ADMINISTRATIVE LAW JUDGE TENTATIVE FINDINGS OF FACT**

---

## THE PARTIES

1. Complainant Smartstone Private Limited (Smartstone) is a private limited company incorporated under Companies ACT 1956 in Bangalore, Karnataka, India having principle place of Business at # 218, Bommasandra, KIADB Industrial Area, 3<sup>rd</sup> Phase, Anekal Taluk, Bangalore-560099, India and is engaged in manufacturing Granite Slabs and exporting Granite and Marble Slabs to United States of America since 2005. (Smartstone Pvt Ltd Compliant at 1(ALJ App. 1).)<sup>1</sup>
2. Respondent No. 1 General Noli USA Inc is a Company incorporated in U.S.A. having principle place of Business at 148-08 Guy R. Brewer Blvd, Jamaica 11434, New York, U.S.A. and is engaged in providing services as non-vessel-operating common carrier (NVOCC) licensed by Federal Maritime Commission FMC Organization No. # 18143NF. (Official Notice, FMC OTI list <http://www2.fmc.gov/oti/NVOCC.aspx> , accessed July 29, 2014) (General Noli USA Inc Complaint at (ALJ App. 7).)
3. Respondent No. 2 Savino Del Bene Freight Forwarders (India) Pvt Ltd is a Company incorporated in India having principle place of Business at No 409, 1<sup>st</sup> Floor, Savera Apartments, 5<sup>th</sup> Cross, 1<sup>st</sup> Stage, 3<sup>rd</sup> Block, HBR Layout, Bangalore – 560043, India and is engaged in providing services as non-vessel-operating common carrier (NVOCC) as Agents of Respondent No. 1 General Noli USA Inc in India. It is a part of Savino Del Bene USA licensed by Federal Maritime Commission FMC Organization No. # 18653NF. (Official Notice, FMC OTI list <http://www2.fmc.gov/oti/NVOCC.aspx>, accessed on July 21, 2014) (Savino Del Bene Freight Forwarders (India) Pvt Ltd Complaint at (ALJ App. 7).)
4. Respondent Savino Del Bene (India) Pvt Ltd is an agent in India for General Noli USA Inc. General Noli USA Bill of Lading No. A712005108 dated 16/01/2012 (Smartstone Pvt Ltd at (ALJ App. 2).)

## PROCEDURAL POSTURE – NO 1946(F)

5. On or about August 05, 2014 Smartstone filed the complaint in Informal Docket No. 1946(I) with the Federal Maritime Commission. (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)
6. On August 13, 2014, the Smartstone complaint was assigned to a Commission Settlement Officer. (Notice of Assignment dated August 13, 2014 from Philip Lee to Claimant and Respondents).

---

<sup>1</sup>The Documents cited have been compiled into the accompanying ALJ's Appendix, Page Numbers in the Appendix are cited as ALJ App #

7. On or about August 13, 2014 General Noli USA Inc was served with complaint in informal Docket No. 1946(F). (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)
8. On or about August 13, 2014 Savino Del Bene Freight Forwarders (India) Pvt Ltd was served with complaint in informal Docket No. 1946(F). (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)
9. On or about September 04, 2014 both the Respondents represented by Clyde and Co US Llp served its reply to the commission in Informal Docket No. 1946(F) requesting for an extension of 30 days of time to respond to Smartstone Claim captioned action from September 08 to October 08, 2014. (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)
10. On or about September 22, 2014 the Respondents represented by Clyde and Co US Llp served its reply to the commission in Informal Docket No. 1946(F) refusing consent to the Informal Adjudication of the claim, respondents answers and request for oral hearing and Certification of Electronically Filed Documents. (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)
11. On September 30, 2014, The Chief Administrative Law Judge entered an order that the claim be considered to be a formal complaint under 46 C.F.R. § 502.311 and to be adjudicated pursuant of 46 C.F.R. Subpart T. The proceeding was assigned to the Honorable Erin M Wirth to issue an Initial decision or dispositive ruling. (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)
12. On September 30, 2014 the Commission served Initial Order to the Claimants and the Respondents. (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)
13. On October 30, 2014 the Claimant and the Respondents filed the Joint Status Report. (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)
14. On November 11, 2014 the Claimant filed their objection for Respondent General Nolis Motion for additional information. (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)
15. On February 27, 2015 the Honorable Erin M Wirth served order on request for Oral Argument Hearing, Order to Supplement the Record, and Briefing Schedule on the Claimant and both the Respondents. (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)

16. On March 24, 2015 the FMC received response to Request for Additional Information with exhibits. (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)
17. On March 31, 2015 the FMC Received Submission of Documents against Order to Supplement the Record by the Claimant and the Respondents. (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)

**CONVERSION OF INFORMAL DOCKET NO 1946 (I)  
TO FORMAL DOCKET NO 1946 (F)**

18. On September 30, 2014, The Chief Administrative Law Judge entered an order that the claim be considered to be a formal complaint under 46 C.F.R. § 502.311 and to be adjudicated pursuant of 46 C.F.R. Subpart T. The proceeding was assigned to the Honorable Erin M Wirth to issue an Initial decision or dispositive ruling. (Official Notice, Smartstone v. General Noli, FMC Docket Activity Log 1946(F).)

**SALE AND SHIPMENT OF MERCHANDISE**

19. On December 27, 2011 Claimant Smartstone Pvt Ltd received approval of Pictures and Prices of the Merchandise of Random Polished Granite Slabs from buyers Expo Granite Marble Llc. (General Noli Complaint at 160 (ALJ App. 16).)
20. On December 27, 2011 Claimant Smartstone Pvt Ltd received an order for one container of Random Polished Granite Slabs from buyer Expo Granite Marble Llc. (General Noli Complaint at 160 and 161 (ALJ App. 16).)
21. On December 28, 2011 buyer Expo Granite Marble Llc forwarded their nominated forwarder details to Smartstone Pvt Ltd. The Buyer appointed Respondent General Noli USA Inc as the nominated forwarder to handle the shipment. (General Noli Complaint at 159 (ALJ App. 16).)
22. On or about January 03, 2012, Smartstone Pvt Ltd sold Random Polished Granite Slabs to Expo Granite Marble Llc. (Smartstone Pvt Ltd Invoice No. SSPL/8154/2011-12 (ALJ App. 1 at 11).)
23. Smartstone Pvt Ltd charged US\$ 22191.07 for the Random Polished Granite Slabs. (Smartstone Pvt Ltd Invoice No. SSPL/8154/2011-12 (ALJ App. 1 at 11).)
24. The Random Polished slabs were packed in 7 wooden crates and 1 Cardboard Box. (Smartstone Pvt Ltd Invoice No. SSPL/8154/2011-12 (ALJ App. 1 at 11).)

25. The invoice required the Random Polished Granite Slabs to be shipped from Bangalore, Karnataka, India to Houston, Texas, United States of America. (Smartstone Pvt Ltd Invoice No. SSPL/8154/2011-12 (ALJ App. 1 at 11).)
26. On January 04, 2012, India Customs issued Shipping Bill for Export No. 6976425. (Shipping Bill for Export No. 6976425 at 182 (ALJ App. 17).)
27. Shipping Bill for Export No. 6976425 concerns Smartstone Pvt Ltd. (Shipping Bill for Export No. 6976425 at 182 (ALJ App. 17).)
28. Shipping Bill for Export No. 6976425 indicates that Smartstone Pvt Ltd is the Exporter. (Shipping Bill for Export No. 6976425 at 182 (ALJ App. 17).)
29. Shipping Bill for Export No. 6976425 indicates that Expo Granite Marble LLC is the Consignee. (Shipping Bill for Export No. 6976425 at 182 (ALJ App. 17).)
30. On January 04, 2012, the India Office of Customs authorized export of the Random Polished Granite slabs sold by Smartstone Pvt Ltd to Expo Granite and Marble LLC through Smartstone Pvt Ltd Invoice No. SSPL/8154/2011-12. (Shipping Bill for Export No. 6976425 at 182 (ALJ App 17).)
31. On January 16, 2012, Savino Del Bene Freight Forwarders (India) Pvt Ltd, subsidiary of Savino Del Bene USA Inc, issued General Noli USA Inc Bill of Lading No. A712005108. (General Noli USA Inc, Bill of Lading No. A712005108 (ALJ App. 2).)
32. Savino Del Bene India Freight Forwarder (India) Pvt Ltd, Subsidiary of Savino Del Bene USA Inc, issued Bill of Lading No. A712005108 as agent for General Noli USA Inc. (General Noli USA Inc, Bill of Lading No. A712005108 (ALJ App.2).)
33. General Noli USA Inc Bill of Lading No. A712005108 describes the shipment as 75 slabs or 4630.64 Sft and 50 nos of samples of Random Polished Granite Slabs packed in 7 Wooden Crates and 1 Cardboard Box “as per Invoice No. SSPL/8154/2011-12 dated 03.01.2012.” (General Noli USA Inc, Bill of Lading No. A712005108 (ALJ App.2).)
34. General Noli USA Inc Bill of Lading No. A712005108 indicates that the shipment of Random Polished Granite Slabs from Smartstone Pvt Ltd to Expo Granite Marble LLC is contained in one twenty feet container, FCL/FCL, container no. MSKU-395899-7 (General Noli USA Inc, Bill of Lading No. A712005108 (ALJ App.2).)
35. General Noli USA Inc Bill of Lading No. A712005108 identifies Smartstone Pvt Ltd as the Shipper / Exporter. (General Noli USA Inc, Bill of Lading No. A712005108 (ALJ App.2).)

36. General Noli USA Inc Bill of Lading No. A712005108 indicates that the shipment is consigned "TO ORDER". (General Noli USA Inc, Bill of Lading No. A712005108 (ALJ App.2).)
37. General Noli USA Inc Bill of Lading No. A712005108 identifies Expo Granite Marble Llc as the party to be notified when the shipment arrives at destination. (General Noli USA Inc, Bill of Lading No. A712005108 (ALJ App.2).)
38. General Noli USA Inc Bill of Lading No. A712005108 identifies that for delivery of the container the consignee needs to apply to General Noli USA – New York, USA. (General Noli USA Inc, Bill of Lading No. A712005108 (ALJ App.2).)
39. General Noli USA Inc Bill of Lading No. A712005108 indicates that the export carrier is MAERSK DARTFORD, Voyage 1202. (General Noli USA Inc, Bill of Lading No. A712005108 (ALJ App.2).)
40. General Noli USA Inc Bill of Lading No. A712005108 indicates states "FREIGHT COLLECT". (General Noli USA Inc, Bill of Lading No. A712005108 (ALJ App. 2).)
41. General Noli USA Inc Bill of Lading No. A712005108 indicates that Houston is the place of Delivery of Container No. MSKU 395899-7. (General Noli USA Inc, Bill of Lading No. A712005108 (ALJ App.2).)
42. On February 27, 2012 Maersk Line issued an Arrival / Aged Cargo Notice to General Noli USA Inc for House Bill Of Lading No. A712005108. (Maersk Line Arrival / Aged Cargo Notice fax message dated March 01, 2012 (AJL App.16 at 167).)
43. The Arrival / Aged Cargo Notice identifies the Vessel as Maersk Virginia Voyage 1202. (Maersk Line Arrival / Aged Cargo Notice fax message dated March 01, 2012 (AJL App.16 at 167).)
44. The Arrival / Aged Cargo Notice indicates that the ETD for the shipment was February 27, 2012. (Maersk Line Arrival / Aged Cargo Notice fax message dated March 01, 2012 (AJL App.16 at 167).)
45. The Arrival / Aged Cargo Notice indicates that the Port of Discharge for the shipment is Houston Terminal. (Maersk Line Arrival / Aged Cargo Notice fax message dated March 01, 2012 (AJL App.16 at 167).)
46. The Arrival / Aged Cargo Notice indicates that the final destination for the shipment is Houston. (Maersk Line Arrival / Aged Cargo Notice fax message dated March 01, 2012 (AJL App.16 at 167).)

47. When container no. MSKU 3958997 arrived in Houston, it was in the custody of General Noli USA Inc. (General Noli USA Inc, Bill of Lading No. A712005108 (AJL App.2).)
48. On February 28 General Noli USA Inc issued Delivery Order for shipment made under General Noli USA Inc Bill of Lading No. A712005108 in favor of Expo Granite Marble Llc. (General Noli USA Inc Delivery Order ref no 0309298 dated February 28, 2012 (AJL App. 16 at 169).)
49. General Noli USA Inc issues Delivery Order for Bill of Lading No. A712005108 WITHOUT collecting the Original Negotiable Bill of Lading from the Buyer Expo Granite and Marble Llc. (General Noli USA Inc Delivery Order ref no 0309298 dated February 28, 2012 (AJL App. 16 at 169).)
50. The Buyer Expo Granite Marble Llc has received the cargo. It is evident from their email correspondence. (General Noli USA Inc Response to Supplement Records (AJL App. 16 at 148).)
51. As the Buyer has already received Delivery of the goods without having retired the Original Bill of Lading from his Bank by accepting to pay the invoice at 90 days the Buyer refuses to accept the documents and sends the Original Set of Documents back to Smartstone Pvt Ltd's Bank. (JP Morgan Chase Bank Return Advice dated June 28, 2012 (ALJ App.1 at 22) State Bank Of India Return of Unpaid Documents dated July 02, 2012 (ALJ App. 1 at 23).)
52. As the container is delivered without the Buyer having any obligation to pay for the Invoice the Buyer refuses to pay the Claimant Smartstone Pvt Ltd in spite of several meetings.

#### **REASONS THAT HAVE GIVEN RISE TO CLAIM**

53. The Respondent No.1 General Noli USA Inc. Inc is engaged in transportation by water as non-vessel-operating common carrier (NVOCC) licensed by Federal Maritime Commission FMC Organization No. 18143NF and is under jurisdiction of Federal Maritime Commission as per Shipping Act 1984.
54. The Respondent No.2 Savino Del Bene India is also engaged in transportation by water as non-vessel-operating common carrier (NVOCC) as Agents of Respondent No. 1 General Noli U.S.A. Inc. in India. It is a part of Savino Del Bene USA licensed by Federal Maritime Commission FMC Organization No. . # 18653NF and is under jurisdiction of Federal Maritime Commission as per Shipping Act 1984.

55. The Claimant Smartstone Private Limited dispatched one 20 Ft. Container No. MSKU395899-7 containing Random Polished Granite Slabs through Respondent No 1 and 2 from Bangalore to Houston U.S.A. The Buyer to whom the material was sent was Expo Granite Marble Llc, USA.
56. Respondent no 1 had been appointed as the Nominated forwarder by the Buyer. Respondent no 2 is the agent on behalf of Respondent no 1 in India.
57. The value of the Shipment was USD 22191.07. The Payment Terms were 90 day from Bill of Lading date on Documents Against Acceptance through Bank.
58. The Respondent No.2 issued To Order Negotiable Multimodal Transport Bill of Lading No. A712005108 dated 16.01.2012 as agent of Respondent no 1 General Noli U.S.A. Inc after the shipment was made.
59. All original export documents for this container were forwarded to the Buyer's Bank by the Claimant Banker State Bank of India with specific instructions that the documents are to be released to the Buyer only after the Buyer accepts the documents for payment of invoice amount of USD 22191.07 at 90 days from the Bill of Lading date.
60. The buyer did not accept the documents nor did he collect the original documents from their Bank. The Original set of documents including the 3 original Bill of Ladings were returned back to our Bank by the Buyers Bank. We presently have with us all the 3 original negotiable Bill of Ladings.
61. In spite of the Buyer not submitting the Original Bill of Lading to Respondent No1 they facilitated delivery of the cargo to the Buyer without collecting original bill of lading against all International Laws, business norms and ethics while our bill remained unpaid. Final amount unpaid as of date is USD 22191.07 and suitable interest from 16.04.2012 (due date for payment of invoice) till date of payment.
62. As the material was delivered to the Buyer without any obligation to pay for the Invoice they have not paid a single cent to Smartstone Pvt Ltd against this invoice. The Claimant has tried to several times to settle the matter with the Buyer. However the Buyer has come up with a different story each time. First they wanted to reduce prices of Madura Gold to Kashmir Gold prices. The Claimant agreed but was not paid. Then they wanted to keep it on consignment basis. The Claimant was still not paid. In order to settle the issue the Claimant went to the extent of offering 40% discount to the Buyer. The Claimant still did not get paid.
63. Respondent no 1 and 2 are responsible for this payment not received by us along with suitable interest on this amount from the due date till the date of payment.
64. In spite of contacting Respondent 1 and 2 several times to date this amount has not been paid to us.

## SECTION OF STATUTE VIOLATED

65. Respondent 1 and 2 have violated sections 10(d)(1), 10(d)(4) of the Shipping Act of 1984 (Shipping Act), 46 U.S.C. §§ 41102( c), 41106(2) respectively regarding their handling of one shipment with one Bill of Lading by delivering the cargo to the buyer without collecting the Original Bill of Lading. The Original Bill of Lading is still lying with the Claimant Smartstone Pvt Ltd.
66. Respondent No. 1 and 2 delivered the cargo to the Buyer without collecting the Original Bill of Lading from them. As a result the Buyer has till date not paid us the invoice amount of USD 22191.07 causing loss to the Claimant.
67. Respondent No. 1 and 2 are responsible for the loss and for making payment to the Claimant for the final unpaid amount of the Invoice USD 22191.07 and suitable interest on this amount from the due date till the date of payment of the amount to the Claimant.

Date: Bangalore, Karnataka, India  
April 21, 2015

Smartstone Pvt Ltd  
For SMARTSTONE PRIVATE LIMITED.,

  
Director

By: \_\_\_\_\_  
Aditya Mittal (Director)  
Plot No. 218, Bomassandra,  
KIADB Industrial Area, 3<sup>rd</sup> Phase,  
Anekal Taluk, Bangalore – 560099  
Karnataka, India.  
Tel: + 91 9845200159  
Email: smartstone@vsnl.net

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic mail a copy to each such person in sufficient time to reach such person on the date the document is due to be filed with the Commission.

Date: Bangalore, Karnataka, India  
April 21, 2015

Smartstone Pvt Ltd  
For **SMARTSTONE PRIVATE LIMITED.,**

*Aditya Mittal*  
**Director**

By: \_\_\_\_\_

Aditya Mittal (Director)  
Plot No. 218, Bomassandra,  
KIADB Industrial Area, 3<sup>rd</sup> Phase,  
Anekal Taluk, Bangalore – 560099  
Karnataka, India.  
Tel: + 91 9845200159  
Email: smartstone@vsnl.net