

**ORIGINAL**

Ref: CAL·EXP:Complaint:

7<sup>th</sup> June, 2006

**The Office of the Secretary,**  
Federal Maritime Commission  
800 North Capitol Street, N W.  
Room 1046,  
Washington, D.C. 20573-0001  
U.S.A.

secretary@fmc.gov

complaint@fmc.gov

Dear Sir/Madam,

**Subject: Filing an Informal Complaint (Small Claim)  
Under section 11(a) of Shipping Act, 1984 against**

**a) FMC Organization No. 014239**

**M/s. International Touch Consolidator Inc, USA\* -**

**(ITC)**

**b) MaCANDREWS & COMPANY LIMITED, USA\* -**

**(MacAndrews)**

Kindly accept this complaint on behalf of us jointly;

**COMPLAINANT**

- 1) **Shippers:** Clutch Auto Limited, Faridabad, India\* - **(CAL)**
- 2) **Receivers:** D&W CLUTCH & BRAKE, Baltimore\* - **(D&W)**  
Maryland USA

**AGAINST**

**DEFENDENTS**

- 1) **Common Carriers:** International Touch Consolidator Inc.\* - **(ITC)**  
**Agents in India:** Rosmarine Shipping Pvt Ltd., New Delhi, India\* - **(Rosmarine)**
- 2) **Ocean Common Carriers:** MacAndrews & Company Limited\* - **(MacAndrews)**  
**Agents in India:** Hitos Liner Agency Pvt. Ltd.,\*

\* Complete details of address & contact Nos. are given in Annexure I.

Contd....2

We (CAL & D&W) are the Owners of cargo covered under **B/L No. RSPLDELBAL005151 dated 14<sup>th</sup> December 2005** issued by the Carriers duly endorsed as "freight prepaid at Delhi, subject to realization – freight prepaid as arranged".

### Payment of Freight

Payment towards this shipment was **paid by CAL vide cheque no. 954571 dt. 16<sup>th</sup> January 2006 for INR 150,000.00 against Rosmarine Debit Note No. ROS/DEL490 dt. 15<sup>th</sup> December 2005 for Rs. 130,158.00.** The cheque was **en-cashed by Rosmarine on 21 January, 2006 as per CAL's Bank statement.**

### Current Status

Currently the shipment is lying in warehouse at Baltimore duly custom cleared by the Carrier and have been incurring demurrage

### The Complaint

The present complaint arises on account of the Defendants' refusal to deliver the cargo to the Receivers, despite repeated presentation of the original B/L No. RSPLDELBAL005151 dated 14<sup>th</sup> December 2005 at Baltimore. Delivery is allegedly sought to be with-held by the Defendants on the ground that there is some freight outstanding on the shipment. This is not correct. In fact, the Defendants (Carriers) have themselves acknowledged receipt of the freight and have accordingly issued freight prepaid B/L. The Defendant's refusal to deliver the cargo is a Criminal Breach of trust and lien being in favor of the Complainant, they are taking advantage / shelter as The Shipping Act 1984 is not prevalent in India.

We seek your assistance in ensuring that the Defendants' Carriers receive whatever freight they may be legally entitled to, but do not exercise a lien over cargo for which they have themselves admitted having received the freight and issued freight prepaid Bs/L for. As a result, the Complainants have lost out on the value of the cargo being US\$ 34014.84 and demurrage and detention charges estimated at US\$ 40000.00 as of date beside damage to their business credit, goodwill and loss of opportunity. This has become deterrent in growth of our future business in USA.

**A demand for delivery of the goods has been addressed by the D&W through their legal attorneys Miles & Stockbridge P.C. of Baltimore vide letter dated 8<sup>th</sup> March' 2006.**

**D&W even offered Bank Guarantee to the Carrier for release of the consignment vide email dated 25<sup>th</sup> April' 2006** which was neither acknowledged nor responded by ITC, the Common Carrier.

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### Willingly and Knowingly

The Defendant's ITC & Rosmarine in connivance acting as agents for each other in respective country's ( India & USA) have withheld the shipment, wrongfully, willingly and knowingly in violation of the US Federal Laws and Shipping Act 1984, their dated 26<sup>th</sup> October 2005 is relevant and depicts clearly their -

#### ➤ **Malafide Intention**

a) **The Complainants (CAL & D&W)** were misguided by the Defendant's by indicating different Carrier names in the House Bill of Lading and Arrival Notice.

- Carrier mentioned in-house B/L **C P KANHA VOY 5151**.
- Arrival Notice/Remarks indicates it as **APL ALEXANDRIT / 5152W**

Due to this, right from the inception the complainant's was denied the facility to track the shipment at Baltimore.

b) The Defendant's started demanding more money towards Freight and other charges from the Complainant. Close on the heels after getting the payment against the shipment

c) Upon submission of Proof of payment by CAL, the Defendant's – Rosmarine to further put pressure on CAL, in connivance with MacAndrew's paid the Freight and Inland Haulage Charges and collected the MBL from MacAndrew's but is refusing the shipment to CAL, On approaching MacAndrew's in New Jersey on 3<sup>rd</sup> May' 2006, the Complainant's Managing Director MacAndrew's did not reveal that they have received the freight and Inland Haulage Charges ,. Rather misguided the complainant that MBL is yet to be surrendered by Rosmarine to MacAndrew's .

#### ➤ **Extortion**

Common Carriers are in league with each other and every action of their's test amounts to," Virtual Extortion" of amounts not due to them and they are carrying the complainant's to Ransom just because they manipulated to collect MBL from MacAndrew's and even though House B/L does not specify the prentation / Surrender of MBL for the release of cargo to the Receiver.

The previous issues of payments were duly reconciled between CAL and Rosmarine, and the statement was even acknowledged by Rosmarione but still they held the complainant's to ransom.

*lc*

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We the Complainants have taken all the steps and have exhausted all the channels to resolve the issue but the Defendant's have no interest of settling the same amicably. Hence your assistance is required to help us out of this stalemate.

**Personal Hearing**

For the Personal hearing or clarification or submission of any documents with respect to the complaint, our at our subsidiary firm started with the sole objective of supporting, increasing business opportunities in USA

**M/s Clutch Auto Pioneer Clutch Inc.,**  
1601, 61<sup>st</sup> Place, South Meridian, MS 39307 USA  
Tel: 601 553 0945, Fax: 601 482 7160  
Email. ash\_bajaj@pioneerclutchinc.com

Contact Person: Mr. Akshay Bajaj - Country Manager  
Mr. Randy Parke - General Manager

**In order to expedite the resolution of this complaint, anticipating your permission, we are sending the advance copy of the complaint along with annexure to the Defendant's. This could save the precious time of the Commission (even though all facts have been brought to their notice and conveyed in numerous communications from both the Complainant's and their attorney's).**

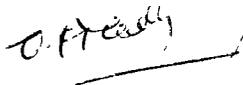
We enclose herewith the following as per Subpart 'S' Rule 502.304 of the Commission

**Annexure**

- a) Sworn Claim as per **Exhibit No. 1 to Subpart S [502.304(a)]**,  
duly verified by a Notary Public
- b) Details of parties I
- c) Shipment Details II
- d) Details of payments III
- e) Efforts made by Complainants IV
- f) Extortion V
- g) Demand Draft No.00001101 dt.23.05.2006 for US\$ 67.00  
towards Filing Fee

Thanking you,

Yours Sincerely,  
For CLUTCH AUTO LTD



**(Vijay Krishan Mehta)**  
**Vice Chairman & Managing Director**

Encl. As mentioned above

# Memorandum

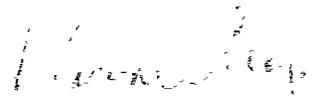
**TO :** Alternative Dispute Resolution Specialist

**DATE:** June 15, 2006

**FROM :** Assistant Secretary

**SUBJECT :** Informal Docket No. 1880(I) - Clutch Auto Limited v. International Touch Consolidator Inc.

Attached are two copies of the referenced Informal Docket submission. Please issue an appropriate Notice of Assignment.



Karen V. Gregory

# Memorandum

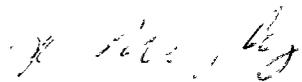
**TO :** Venetia Bell

**DATE:** July 6, 2006

**FROM :** Commission Alternative Dispute Resolution Specialist

**SUBJECT :** Assignment of Informal Docket 1880(I)

Pursuant to 46 CFR 502.301(b), I am appointing you to be the Settlement Officer in Informal Docket No. 1880(I): *Clutch Auto Limited v. International Touch Consolidator Inc.* Please issue a *Notice of Filing and Assignment* as soon as possible. Thanks,

  
Ronald D. Murphy

cc: Secretary