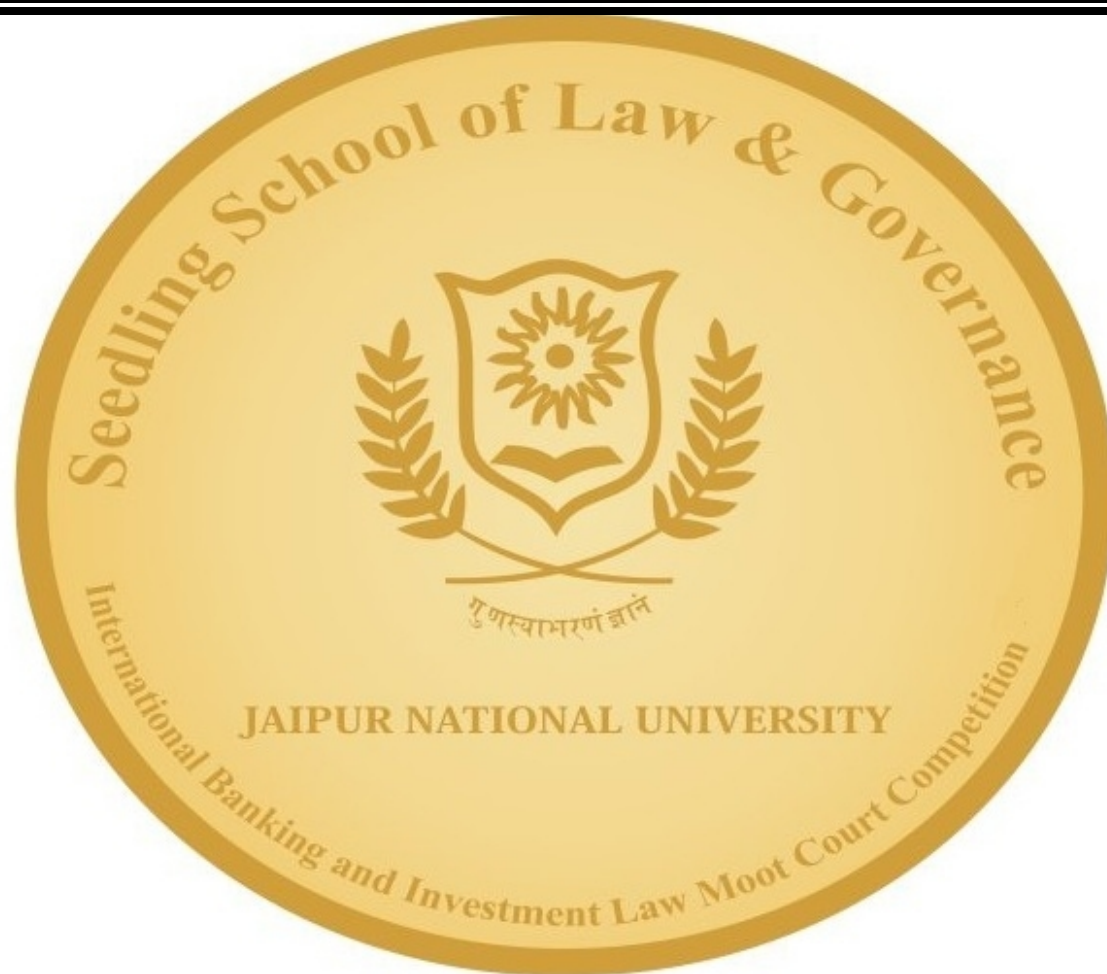


**JAIPUR NATIONAL UNIVERSITY**  
**SEEDLING SCHOOL OF LAW AND GOVERNANCE**



**3<sup>RD</sup> INTERNATIONAL BANKING AND INVESTMENT LAW**

**MOOT COURT COMPETITION 2014**

**MOOT PROBLEM**

**Global Charters Ltd (GCL)**

v.

**Avalon Aviation Finance Management Corporation (AAFMC)**

1. In view of the booming aviation industry in India, leaders of three corporate groups of India decided to form an air charter company. The company was registered on 2<sup>nd</sup> January 2014, with 600 million shares @ INR 1, one third of these to be allotted to each of the co-founders. The company was registered on 1<sup>st</sup> February 2014 under the name Global Charters Ltd (GCL), headquartered at Nariman Point in Mumbai. It acquired six Bombardier Learjet 85s (Global 8000) one after another and pressed them into charter service, sometimes for charter use by the sponsors themselves. With a capacity to carry upto 19 executive passengers, the Jet came handy to ferry corporate executives for meetings/conferences across the globe.
2. By June 2014, Global Charters experienced phenomenal growth. Its shares appreciated to INR 25 per share. GCL now decided to branch off into a new area – offering charters for pilgrimage, vacation, study tours, attendance at special business conferences, etc. – and for this purpose it decided to acquire two SSJ100-95s with a single class seating capacity of upto 98 passengers plus six crew, @ US \$ 32 million (for specifications see ANNEXURE I).
3. GCL approached Avalon Aviation Finance Management Corporation (AAFMC), a company operating in San Francisco, USA, but incorporated in Haiti, with a view to seeking financing of the purchases of the two SSJ100-95s. After negotiations, AAFMC issued an Expression of Interest, according to which (1) GCL should put in US\$ 14 million as seed money to be used by AAFMC as investment in GCL shares, to be converted into 840 million shares of Re.1 each (i.e., the original face value of the shares when they were issued in January 2014). These shares would be held by AAFMC for the duration of the loan of US\$ 50 million, which AAFMC would raise as a syndicated loan from 10 international banks and would lend it to GCL at an annual interest rate of 5.5%. During the currency of the loan, no decisions of GCL Board of Directors which would have financial implications for the company should be effective without the concurrence of an AAFMC-appointed Finance Director on the Board. On behalf of GCL, AAFMC would directly pay up the Sukoi Company,

the manufacturers of the two SSJ100-95s, the entire purchase amount of US\$ 64 million. The sale agreement between Sukoi and GCL would then be underwritten by AAFMC. GCL would then execute with AAFMC the following documents: (1) a Sale Agreement, (2) a Leaseback Agreement, (3) a Loan Agreement (4) an Undertaking to Transfer the title to the aircraft upon successful termination of the lease agreement at the end of the lease period, (5) a letter from GCL Board of Directors allotting 14 million shares to AAFMC, and (6) a guarantee by the National Bank of India, the bankers of GCL. GCL also took the requisite insurance cover for the aircraft from one of its constituent groups; however, AAFMC was not formally consulted on this.

4. The above Expression of Interest was unanimously accepted by the Board of Director of GCL. The documents stipulated in the Expression of Interest were executed on 15/16 July 2014. The two SSJ100-95s arrived in Mumbai on 25 July 2014. They were respectively named *GCL Swarnarekha* and *GCL Chandralekha*.
5. GCL went on a publicity drive for about a month to start the SSJ charters. The business began to pick up. The growth of the business also witnessed further expansion of business by GCL into hotel industry which went well with the charter business. Eventually, by 2017, GCL became proud owners of Blue Heaven hotel chain, a chain of 14 hotels, in USA, Thailand, Singapore, UK and Australia.
6. The tragedy struck on night of 10<sup>th</sup> December, 2019, when a British based Shiantoist terrorist group bombed a Blue Heaven Hotel near Piccadilly, Central London, claiming that the hotel chain was substantially funded by “the enemies” of Shiantoist national movement in Ruritania. Ruritania went into turmoil, when army staged a coup and took over the government in January 2019. Since then, the nationalists, known as Shiantoists, have been waging a war against the military junta which have enforced an internal emergency, suspended a democratic constitution and civil liberties. All industries were nationalized, save the mining industry. Ruritania has been known for its abundant copper deposits, and the mineral concession rights have been monopolized by a British business group which was already a partner with GCL in the Hospitality and Tourism industries in different parts of the world.
7. The London terrorist strike has had a snowballing effect on GCL’s hotel and tourism industry, which in turn seriously affected the SSJ100-95 charter flights. Taking into

account the economies of scale, GCL Board of Directors unanimously (AAFMC appointed director concurring) decided to lease out one of the SSJ100-95s, GCL *Chandralekha*, in such a way that GCL's obligations under the current GCL- AAFMC Leveraged Lease are more than fully matched.

8. When the decision was formally communicated to AAFMC with a view to seeking its concurrence, AAFMC had no serious objection to the proposal as, according to it, this would not seriously impair the original investment. However, there was a clear divergence of views among the syndicated creditors, the majority of whom favoured restructuring of the original lease permitting penalty payments by GCL for premature repayment the loan proportionate to the leverage lease of *GCL Chandralekha*. They did not want to take the risk of transferring financial obligations to an unknown third party. The majority view along with the minority view was conveyed to GCL.
9. For the same reason, AAFMC, now representing the creditors' syndicate, refused to accept the new lease arrangements for GCL *Chandralekha*, and gave notice to GCL that its decision to lease out *Chandralekha* constituted a default of the GCL-AAFMC Leveraged Lease, that if the decision was not reversed in 15 days, the penalty clauses would start operating, and that GCL would be obliged to return the possession of the two aircraft to AAFMC under the GCL-AAFMC leveraged lease.
10. GCL invokes the arbitration clause 20 of the Lease Back Agreement (Annexure III and the matter is now before the ICC arbitration tribunal at Singapore. On behalf of the Creditors, AAFMC decides to raise objections to the applicability of the arbitration clause in respect of the right of the Lessor to identify and apply default under Clause 16, besides raising arguments on merits.

**ANNEXURE I**

**SSJ100-95 SPECIFICATIONS**

**Engine:** 2 X SaM146 turbofan engines

**Power:** 26,960.00 Ibf

**Avionics:** Thales avionics Suite

**Maximum Cruising Speed:** 954.31 Km/hr 593.00 mph

**Service Ceiling:** 12,496.80 metres 41,000.00 feet

**Rate of Climb:** N/A

**Numbers Ordered/Sold:** 0

**Cabin Height:** 2.12 metres 6.96 feet

**Cabin Width:** 3.26 metres 10.70 feet

**Cabin Length:** 19.00 metres 62.34 feet

**Exterior Length:** 29.82 metres 97.83 feet

**Wingspan/ Rotor Diameter:** 27.80 metres 91.21 feet

**Fuselage Diameter:** N/A

**Baggage Volume:** 21.96 m<sup>3</sup> 777.80 feet<sup>3</sup>

**Maximum Take Off Weight:** 45,881.64 Kgs 101,150.00 lbs

**Maximum Payload:** 11,130.00 Kgs 24,537.20 lbs

**Fuel Tank Capacity:** 3,470.27 gallon 13,135.00 litres

**Fuel Economy:** 0.34 Km/litre 0.80 NM/gallon

**Minimum Take Off Distance:** 1,802.89 metres 5,915.00 feet

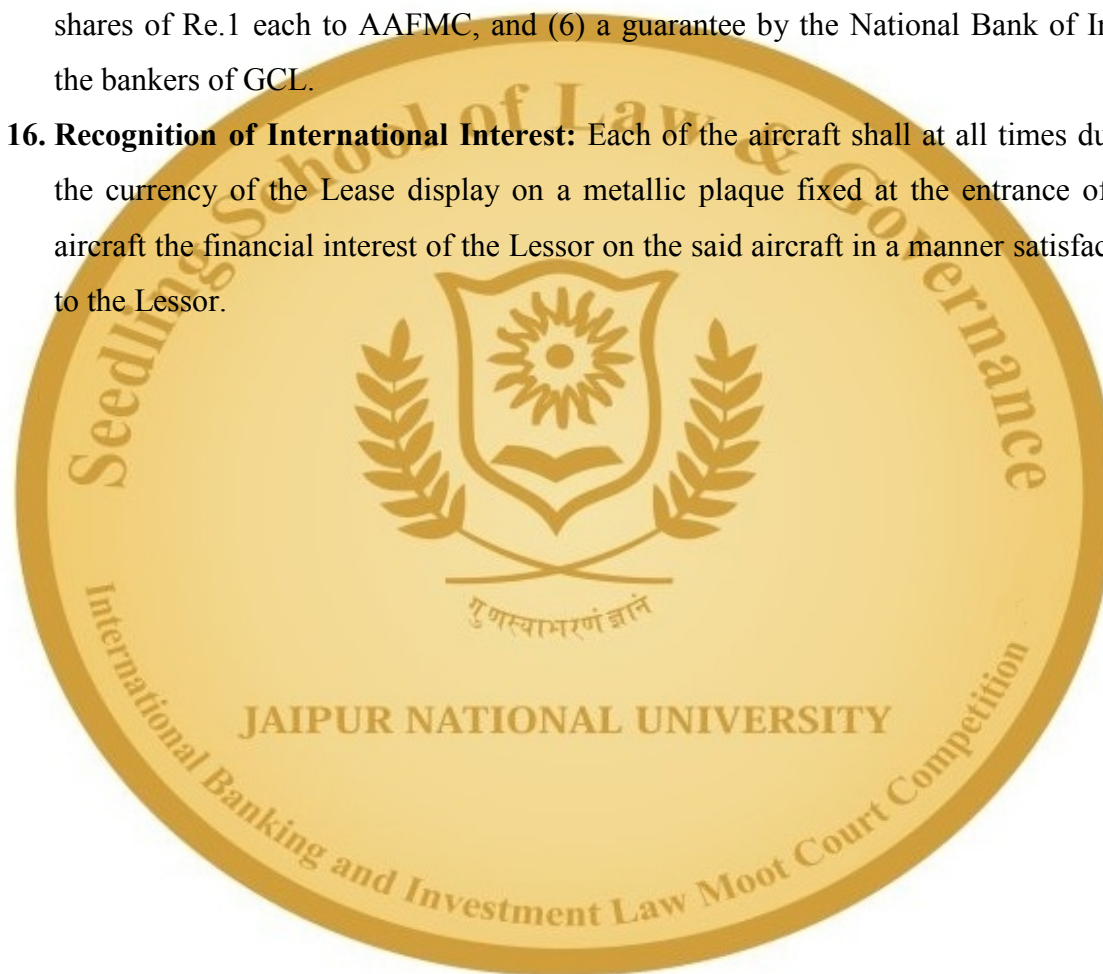
**Minimum Landing Distance:** 1,524.00 metres 5,000.00 feet

## ANNEXURE II

### EXPRESSION OF INTEREST/LETTER OF INTENT

1. **Proposer:** Avalon Aviation Finance Management Corporation (AAFMC), Fisherman' Cove, San Francisco, USA
2. **At the request of :** Global Charters Limited (GCL), Soli Towers, Nariman Point, Mumbai, India
3. **Proposed Facility:** US\$ 64 million in two tranches, namely (1) US\$10 million for 14 million shares of GCL, and (2) US\$ 50 million, towards leveraged lease of two SSJ100-95s.
4. **Sydication:** AAFMC and 10 specified international banks, with AAFMC as the agent of the Syndication.
5. **Limitation of repayment liability:** US\$50 million plus interest according to agreed Amortisation Schedule
6. **Limitation of repayment liability subject to:** (1) Transfer by GCL in favour of AAFMC of 840 million shares of Re.1 each face value, and (2) appointment of a Finance Director on the Board of Directors of GCL whose concurrence shall be a prerequisite to adoption of all decisions with financial implications until the end of the Term.
7. **The Term:** 15 years from the delivery of the aircraft by the Sukoi Company (JSC) 23B, Polikarpov Street, Moscow, 125284, Russia, p/b 604. For purposes of accounting 360 days will constitute one year.
8. **Repayment Procedure:** linked to sale and lease-back matching bridging loan with appropriate amortization EMIs indicated in No. 4 above.
9. **Interest:** 5.5% per annum.
10. **Currency of re-payment:** to be indicated by AAFMC 6 days before the due date according to the Amortisation Schedule (No.5).
11. **Management Fee:** 1% of US\$ 50 million.
12. **Commitment Fee:** 0.5% of US\$ 50 million.
13. **Pre-payment penalty:** Remaining unpaid principal and the remaining interest amount on that principal as per Amortisation schedule, in addition to a penalty sum of US \$250,000.

- 14. Stipulations as to aircraft:** Both the aircraft to be operated by GCL. It should take out Combined Single Limit Liability (CSLL) to the satisfaction of AAFMC, at least 125% of the purchase cost of the aircraft. It shall carry out regular maintenance servicing strictly according to the aircraft manual with a reputed aircraft maintenance engineering firm with ICAO level licensing.
- 15. Documentation:** (1) a Sale Agreement, (2) a Lease Back Agreement, (4) a Loan Agreement (4) an Undertaking to Transfer the title to the aircraft upon successful termination of the Lease Back agreement, (5) a letter from GCL allotting 840 million shares of Re.1 each to AAFMC, and (6) a guarantee by the National Bank of India, the bankers of GCL.
- 16. Recognition of International Interest:** Each of the aircraft shall at all times during the currency of the Lease display on a metallic plaque fixed at the entrance of the aircraft the financial interest of the Lessor on the said aircraft in a manner satisfactory to the Lessor.



### ANNEXURE III

#### DEFAULT AND ARBITRATION CLAUSES IN THE LEASE BACK AGREEMENT

#### BETWEEN GCL AND AAFMC

16. The following acts or inactions on the part of the Lessee (GCL) shall constitute a default in respect of the Lease Back Agreement and all other associated agreements executed by both the Parties in relation to the two Sukoi aircraft:

- (a) If the Lessee fails to make payments according to the amortization Schedule, and in the a currency specified by the Lessor (AAFMC) at each payment schedule (no claim of setoff shall justify default of payments according to the amortisation schedule);
- (b) If the Lessee at any time permits the use of the aircraft in any manner inconsistent with the conditions of the aircraft insurances, or takes insurances below the specifications of the Lease Back Agreement;
- (c) If the Lessee fails to comply with the requirements of upkeep of the aircraft, including the requirements relating to spares;
- (d) If the Lessee subleases either of the aircraft without the approval of the Lessor;
- (e) If the Lessee permits the use of either of the aircraft for purposes other than those specified in the Lease Back Agreement;
- (f) If the Lessee keeps the aircraft in operation in violation of any provisions of the Indian Aircraft Act, 1934, rules thereunder of 1937, directions of the Directorate-General of Civil Aviation, or any other applicable laws;
- (g) Any other acts or omissions on the part of the Lessee in violation of the Lease Back Agreement, any of the associated agreements.

For removal of any doubts, it is clarified that the decision on whether a default has occurred or what consequences to follow upon such a decision shall be the privilege of the Lessor.

17. Upon default coming to the knowledge of the Lessor, the Lessor shall, as promptly as possible, serve on the Lessee a notice of default specifying the nature of default, and requiring the Lessee to remedy the default within a period of 15 days.

18. If the Lessee is unable to remedy the default within the said period, or any further period granted by the Lessor at the request of the Lessee;

- (a) The Lessor may terminate the entire Leveraged Lease transaction, cancel all agreements with GCL and demand immediate delivery of possession of the leased aircraft.
- (b) The Lessor may require the Lessee either to return its original investment in the Lessee's equity (namely, US \$ 14 million) along with commercial interest at the rate of 12 % per annum from the date of issuance of shares against the said investment until the date of cancellation of the agreements.
19. Any such termination of agreements as specified in Clause 18 shall not preclude either Party preferring a reference to Arbitration under Clause 20, if either Party is of the opinion that there exists a dispute as to the interpretation and/or application of the Lease Back Agreement and/or any of the associated agreements.
20. (a) If either Party is of the opinion that there exists a dispute as to the interpretation and/or application of the Lease Back Agreement or any of the associated agreements, it shall state the dispute and refer the matter to the International Chamber of Commerce Office (ICC for short), Singapore.
- (b) ICC, Singapore shall forthwith appoint an arbitrator well versed in Leveraged Leasing Transactions and Aviation Law, and request him/her to hear both parties, and deliver the award within thirty days' of his/her appointment.
- (c) Both parties agree that the award of ICC, Singapore-appointed tribunal shall be final and binding on them.
- (d) Expenses to be incurred by the ICC, Singapore, including the payment of appropriate fees for the Arbitrator, shall be shared equally by both Parties.