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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.PET. 314/2011**

IN THE MATTER OF

CITICORP MARUTI FINANCE LIMITED

..... Petitioner

Through: **Mr. Satwinder Singh, Advocate with
Mr. Vishwanath Pareek, Advocate.**

**Mr. K.S. Pradhan, Deputy Registrar
of Companies for Regional Director
(Northern Region).**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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24.11.2011

1. This petition has been filed under Sections 100, 101 and 102 of the Companies Act, 1956 (for short 'Act') by Citicorp Maruti Finance Limited (Petitioner Company) seeking approval of this Court to the proposed reduction of share capital as resolved by its resolution dated 14th July, 2011.
2. The registered office of the Petitioner Company is situated at New Delhi, within the jurisdiction of this Court.

3. Details with regard to the date of incorporation of the Petitioner Company, its authorized, issued, subscribed and paid up capital have been given in the Petition.

4. A copy of the Memorandum and Articles of Association of the Petitioner Company as well as the latest audited Annual Accounts of the Petitioner Company for the year ended 31st March, 2011 and the management certified provisional financial accounts as at 24th June, 2011 have also been enclosed with the petition.

5. A copy of the Resolution passed by the Board of Directors of the petitioner proposing the Reduction of Capital has been placed on record.

6. By this petition, the Petitioner Company proposes as under:

- 63,00,000 10.75% redeemable non-cumulative preference shares of Rs. 100/- each shall be paid in cash, at par, without creating any corresponding Capital Redemption Reserve Account to that extent.
- the issued, subscribed, paid up and face value of each equity share of the Company shall be reduced from Rs. 10/- per equity share to Rs. 8/- per equity share, by canceling the paid up value and face value and value of the equity share capital to

the extent of Rs. 2/- per equity share and the amount so reduced shall stand adjusted against the accumulated losses as appearing in the books of accounts as on March 31, 2011 and the balance, if any, shall be adjusted in the Capital Reserve Account of the Petitioner Company.

- 2,60,00,000 fully paid-up equity shares originally having face value and paid up value of Rs. 10/- per equity share, now so reduced to Rs.8/- per equity share, shall be reduced and extinguished by paying to Maruti at a price of Rs. 8.348 per equity share aggregating to Rs. 21,70,48,000/- (Rupees Twenty One Crores Seventy Lacs Forty Eight Thousand only), as determined by M/s. Dass Gupta & Associates, Chartered Accountants and agreed to by and between the Petitioner Company, Maruti and the individual(s) holding nominal shares jointly with Maruti; and the difference, if any, in the paid-up value of each share of the Petitioner Company and the amount agreed to be paid to Maruti shall be adjusted in the Capital Reserve Account of the Company.

7. Reasons for the reduction of share capital have been stated in para 5 of the Petition. It is also stated that reduction of share capital does not adversely affect the Petitioner Company, its shareholders or its creditors.

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8. Learned counsel for the petitioner submits that Table "A" of Schedule I to the Companies Act, 1956 is applicable to the petitioner-Company which authorizes to reduce its share capital.

9. A copy of the special resolution of the Petitioner Company passed in accordance with the provisions of Section 189 of the Act at the Annual General Meeting of the Petitioner Company held on 14th July, 2011, has been placed before this Court.

10. Based on the facts submitted before this Court that as per the unaudited balance sheet as on 24th June, 2011, there are no secured creditors and that the current liabilities of unsecured creditors is only to the tune of Rs. 41 lacs whereas the cash & bank balance is Rs. 91 crores, this Court vide its order dated 28th July, 2011 had dispensed with the procedure mentioned under Section 101(2) of the Act.

11. By the same order, notice was directed to be issued to the Registrar of Companies, NCT of Delhi & Haryana. Notice was accepted by Mr. K.S. Pradhan, Deputy Registrar of Companies on behalf of the Registrar of Companies. Further, it was directed that the citations be published in 'Financial Express' (English Edition) and 'Jansatta' (Hindi Edition).

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Affidavit of service and publication of notice has been filed by the Petitioner Company showing compliance regarding service of the petition on the Registrar of Companies and the Regional Director, Northern Region, and also regarding publication of citations in the aforesaid newspapers on 18th November, 2011.

12. The Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit dated 27th September, 2011. The Regional Director in his affidavit has submitted that the Authorised Share Capital Clause in the Memorandum and Article of Association of a Company can be changed/alterd only after following the procedure prescribed under the relevant provisions of the Act and therefore, the Petitioner Company may be asked to follow the procedure prescribed under the provisions of Section 94 read with Section 95 of the Act.

13. In this regard, the Petitioner Company has filed its reply stating that Section 94 of the Act provides that a company limited by share capital, if so authorised by articles, increase, consolidate, convert, sub-divide or cancel its share capital by passing an ordinary resolution in the meeting of shareholders of the company. Further, Section 95 of the Act provides that if a company having share capital has consolidated, converted, re-converted,

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sub divided, redeemed or cancelled its share capital, the company shall within 30 days after doing so, give notice (in e-form 5) to the Registrar of Companies. The petitioner-Company has stated in its reply that it has passed a special resolution in terms of the provisions of Sections 100-104 read with Section 94, 106 and other applicable provisions of the Act in its Annual General Meeting held on 14th July, 2011, inter-alia, providing that capital clause as provided in the Memorandum and Articles of Association shall also be amended accordingly. Considering the above, the Petitioner Company submitted that it has already complied with the provisions of Section 94 of the Act by passing a special resolution in the Annual General Meeting held on 14th July, 2011, subject to confirmation of the same by this Court. Therefore, what is left is the compliance of Section 95 of the Act, which can be done only after the present petition is sanctioned by this Court. For this, the Petitioner Company has already undertaken to file the relevant e-form 5 with the ROC and also comply with other applicable provisions of the Act for effectuating the changes in its Memorandum and Articles of Association after the present Petition is sanctioned by this Court.

14. In view of the aforesaid, the objection raised by the Regional Director (Northern Region) does not survive.

15. No objection has been received to the proposed reduction of capital from any other party. Mr. N.P.S. Chawla, learned counsel for the Petitioner Company, has filed an affidavit dated 21st November, 2011 confirming that neither the Petitioner Company nor its counsel has received any objection pursuant to citations published in the newspapers.

16. In view of the facts and circumstances of the present case, the reduction of share capital as resolved by the shareholders of the company by passing a special resolution dated 14th July, 2011 is hereby confirmed. Henceforth, the Authorised Share Capital of the Petitioner Company shall consist of Rs. 1,75,00,00,000/- (Rupees One Hundred Seventy Five Crore Only) divided into 12,50,00,000 (Twelve Crore Fifty Lac) equity shares of Rs. 8/- (Rupees Eight Only) each and 75,00,000 (Seventy Five Lac Only) 10.75% Redeemable Preference Shares of Rs. 100/- each and the issued, subscribed and paid up capital of the petitioner-Company be Rs. 59,20,00,000/- (Rupees Fifty Nine Crore Twenty Lac Only) divided into 7,40,00,000 (Seven Crore Forty Lac) equity shares of Rs. 8/- (Rupees Eight Only) each fully paid up and accordingly, the form of the minute as proposed to be registered under section 103(1)(b) of the Act as given in para 19 of the petition, is also hereby approved.

17. The order passed today and the minute approved by this Court shall be registered in accordance with Section 103 of the Act by the Registrar of Companies and shall be published in terms of sub-Section (3) of Section 103 in the 'Financial Express' (English) and 'Jansatta' (Hindi) by the Petitioner Company.

18. Learned counsel for the Petitioner Company states that the Petitioner Company would voluntarily deposit a sum of Rs. 50,000/- with the Common Pool Fund of the Official Liquidator within three weeks from today. The said statement is accepted.

19. The petition is allowed in the above terms.

Order Dasti.


MANMOHAN, J-

NOVEMBER 24, 2011
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