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

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Date of Judgment:04.10.2012.

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CO.PET. 359/2012

INDIA YAMAHA MOTOR PVT LTD Petitioner

Through: Mr.Vijay Nair, Advocate for the
petitioner.

Mr.K.S.Pradhan, Deputy ROC on
behalf of Regional Director
(North).

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAU

INDERMEET KAUR, J. (Oral)

1 This petition has been filed under Section 100 of the Companies Act, 1956 (hereinafter referred to as the Act) by India Yamaha Motor Private Limited (hereinafter referred to as the petitioner company) seeking approval of this Court to the proposed reduction of paid up equity share capital of the company as resolved by its special resolution dated 20.7.2012.

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 Copies of the Memorandum and Articles of Association of the petitioner company as well as the last audited balance sheet of the petitioner company for the year ended on 31.12.2011 is also annexed with the petition. The Article 4.1 of the Articles of Association of the company permits the company for reduction of share capital by special resolution in a manner permitted by law.

5 A copy of the resolution passed by the Board of Directors of the petitioner company on 20.7.2012 proposing the reduction of the paid-up share capital of the company has been placed on record.

6 By this petition, the petitioner company proposes as under:-

“The paid up Equity Share capital of the company be and is hereby reduced from Rs.1710,00,00,000/- divided into 171,00,00,000 Equity Shares of Rs.10/- each to Rs.660,00,00,000/- divided into 66,00,00,000 Equity shares of Rs.10/- each by cancelling 105,00,00,000 Equity Shares of Rs.10/- each in the following manner:-

<i>Name of Shareholder</i>	<i>No. of Equity shares to be reduced</i>	<i>Total value of Equity shares to be reduced (in Rs.)</i>
<i>Yamaha Motor Co. Ltd. Japan</i>	<i>91,08,54,961</i>	<i>910,85,49,610</i>
<i>Yamaha Motor Asia Pte. Ltd., Singapore</i>	<i>44,88,550</i>	<i>4,48,85,500</i>
<i>Bussan Automotive Singapore Pte. Ltd. Singapore</i>	<i>13,46,56,489</i>	<i>134,65,64,890</i>
<i>Total</i>	<i>105,00,00,000</i>	<i>1050,00,00,000</i>

7 Reasons for the reduction of the paid up share capital have been stated in para 11 of the petition.

8 A copy of the special resolution of the petitioner company passed in accordance with the provisions of Section 189 of the Act at the Extraordinary General Meeting of the petitioner company held on 20.7.2012 has been placed before this Court.

9 It is submitted that the reduction in capital does not involve either diminution of any liability in respect of the unpaid capital or payment to any shareholder of any paid up capital. In the circumstances, the creditors of the company are not affected by such reduction in capital and are therefore not entitled to object to such reduction of capital. It is further submitted that no investigation proceedings are pending against the company under Sections 235 to 251 of the Act and as on date no winding up proceeding is pending against the company.

11 It was directed that the publication of this petition also be effected in the Indian Express (english edition) and Jansatta (hindi edition). Affidavit of publication of citation in the newspapers on 11.8.2012 has been filed by the petitioner company.

12 On 01.8.2012 notice of the petition was accepted by Mr.K.S.Pradhan, Deputy Registrar on behalf of Regional Director (North). The Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit dated 28.9.2012. The relevant portion of the said affidavit reads as under:-

“3.That the Deponent craves leave to submit that as per Article 4.1 of Articles of Association of the Company permits that Company for Reduction of Capital.

4.That the Deponent craves leave to submit that the petitioner company incurred substantial losses in business operations since its incorporation. For the smooth operations on with a view to enable the Company to effectively project itself in a highly competitive market, the Company needs to revamp its image & also requires to restructure its financial situation & operations. After consideration of various options, the Board of Directors of the Company has proposed that one of the preferred options towards becoming to a healthier & better managed Company is the reduction of losses. Since, the Company has substantial accumulated losses, it would be difficult to reduce the losses within a short span of time through operating alone. It is their considered opinion that the effective method of reducing losses in a short period of time is by reducing the share capital of the Company & writing off losses against the same. Accordingly, the petitioner company seeking permission for the reduction of share capital from Rs.17,10,00,00,000/- to Rs.6,60,00,00,000/- divided into 66,00,00,000 equity share of Rs.10 each by cancelling 1,05,00,00,000 equity shares of Rs.10/- each.

5.That the Deponent craves leave to submit that the proposed Reduction of Share Capital has been consented by the equity Shareholders of the Company by a Special Resolution duly passed at the AGM held on 20.7.2012.

13 In view of the facts and circumstances of the present case the resolution dated 20.7.2012 and the form of minutes proposed at Annexure P-12 to be registered under Section 103(1)(b) of the Act for reduction of the paid up share capital are approved.

14 The order passed today and the minutes 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 Indian Express (english edition) and Jansatta (hindi edition) by the petitioner company.

15 Learned counsel for the petitioner company states that the petitioner company would voluntarily deposit a sum of Rs.1,00,000/- with the Common Pool Fund of the Official Liquidator within three weeks from today. The said statement is accepted.

15 The petition is allowed in the above terms.

Order dasti.

INDERMEET KAUR, J

OCTOBER 04, 2012

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