

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, KOLKATA

C.P. No. 196/KB/2018

In the matter of:

The Companies Act, 2013

And

In the matter of:

Section 66 of the Companies Act, 2013 read with Rule 2(1) of the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016;

And

In the matter of:

VISA Minmetal Limited, a company incorporated under the Companies Act, 1956 and having its registered office at 8/10, Alipore Road, Kolkata-700027

-Petitioner

Coram: Mr. Madan B. Gosavi, Member (Judicial)

Date of pronouncement of the Order :

For the Petitioners:

1. Mr. Shaunak Mitra, Advocate
2. Mr. Raj Kumar Banthia, Pr. C.S
3. Ms. Neha Somani, Pr. C.S

Mr. K.S. Pradhan, Joint Director, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs

ORDER

Per Madan B Gosavi, Member (Judicial)

1. The broad facts in the background of which the present petition came to be filed that the Petitioner Company, (hereinafter called "the Company") was incorporated on the 23rd Day of November, 2009 under the provisions of the Companies Act, 1956 (hereinafter called the "Act") as a company limited by shares with share capital. The Authorized Share Capital of the Company as at 31st December 2017 is Rs.520,200,000/- comprising of 5,20,000 Equity Shares of Rs. 10/- each and 51,50,000 0.5% Non-Cumulative Redeemable Preference Shares of Rs. 100/- each. The Issued, Subscribed & Paid-up share capital of the Company is Rs. 517,972,000/- divided into 5,15,000 Equity Shares of Rs. 10/- each, fully paid up and 51,28,220 0.5% Non-Cumulative Redeemable Preference Shares of Rs. 100/- each, fully paid-up. The Petitioner Company is engaged in the business of trading in minerals and metals and for providing consultancy

services on development of markets for various raw materials, minerals, metals, etc.

2. It is submitted by the Petitioner Company that Article 8 of the Articles of Association of the Company empowers the Petitioner Company to reduce the share capital read as follows:

"The Company may (subject to the provisions of section 78, 80 and 100 to 105, both inclusive, and other applicable provisions, if any, of the Act) from time to time by Special Resolution reduce

(a) the share capital;

(b) any capital redemption reserve account; or

(c) any share premium account

in any manner for the time being, authorised by law and in particular capital may be paid off on the footing that it may be called up again or otherwise. This Article is not to derogate from any power the Company would have, if it were omitted.

1. Financial performance of the company as revealed from its audited financial statements for the year ended 31.03.2017 is as under:

(Amount in Rs.)

Particulars	For the year ended 31.03.2017
Total Income	2,651,953,710

Total Expenditure	2,640,276,433
Reserves & Surplus	(404,749,679)
Profit/Loss before Taxation	11,677,277
Profit for the year	113,306,424

3. It is stated that the Petitioner Company has NIL Secured creditors as on 31st December, 2017. Further, the Petitioner Company has 27 Unsecured Creditors as on 31st December, 2017 amounting to total of Rs. 1,78,30,84,160 whose name is entered in the list of creditors as required under Regulation 3 of the NCLT Rules, 2016. A List of Creditors as on 31st December, 2017 showing total creditors amounting to Rs 1,78,30,84,160 signed by Directors of the Company marked as **Annexure "H"** along with a certificate from the Statutory Auditors of the Company to the effect that the abovesaid list is correct as per the records of the Company and duly verified by the Statutory Auditor is enclosed to this Application and marked as **Annexure "I"**.

4. Hence, the Board of Directors of the Company at its meeting held on 20th September 2017 considered it appropriate and prudent to reduce the Non-Cumulative Redeemable Preference share capital of the Company which will have a positive impact on the key financial ratios such as return on capital employed, return on net worth, etc. Further, the reduction of Non-Cumulative Redeemable Preference share capital does not affect the

Company's ability in future to increase its share capital and/or raise funds by way of borrowings.

5. It is further submitted that the proposed reduction of Non-Cumulative Redeemable Preference share capital has become necessary because the Petitioner Company is contemplating to rationalize its capital structure by reducing by way of cancellation of its outstanding Non-Cumulative Redeemable Preference Share Capital by way of capital reduction. The 51,28,220 0.5% Non-Cumulative Redeemable Preference Shares of Rs.100/- each, fully paid-up, issued by the Company are subscribed by VISA Realty Limited and VISA International Ltd. The entire Equity shareholding of VISA Minmetal Limited and VISA Realty Limited is held by VISA Group Family Foundation. Thus both the Companies are companies belonging to the same group and are owned by the same set of shareholders.

6. It is further submitted that in view of the above, both the Equity shareholders and the Preference shareholders of the Company, by passing a Special resolution at their respective Extraordinary General meetings held on 20th September, 2017 have approved the Scheme of reduction of the Issued, Subscribed and Paid Up Share Capital of the Company, from Rs.51,79,72,000/- divided into 5,15,000 equity shares of Rs.10/- each, fully paid up and 51,28,220 0.5% Non-Cumulative Redeemable Preference Shares of Rs.100/-each fully paid up to Rs. 51,50,000/- divided into

5,15,000 Equity shares of Rs.10 each, fully paid up. The Company has claimed to have sufficient reserves to meet the proposal for reduction of Non-Cumulative Redeemable Preference share capital and the interests of the Company's creditors will not be adversely affected.

7. The members present at the EOGMs held on 20th September, 2017 are as follows:

Sl No	Name of the Equity Shareholder	No. of Shares Held
1.	VISA Group Family Foundation	5,14,400
2.	Mrs. Saroj Agarwal	100
3.	Mrs. Saroj Agarwal jointly with Mr. Vishal Agarwal	100
4.	Mrs. Saroj Agarwal jointly with Mr. Vikas Agarwal	100
5.	Mrs. Saroj Agarwal jointly with Mr. Vishal And Vikas Agarwal	100
6.	Vivek Agarwal	100

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7.	Mrs. Saroj Agarwal jointly with Mr. Vishambhar Saran	100
TOTAL		5,15,000

SI No	Name of the Preference Shareholder	No. of Shares Held
1.	VISA International Limited	36,28,220
2.	VISA Realty Limited	15,00,000
TOTAL		51,28,220

8. It is also stated that the shareholding pattern of the Non- Cumulative Redeemable Preference Share Capital of the Company, prior and post approval of the Application shall be in the following manner:

Particulars	Prior Holding before reduction of Cumulative Preference Share Capital	Holding after reduction of Non-Cumulative Redeemable

		Preference Share capital
Number of 0.5% Non-Cumulative Redeemable preference shares	51,28,220	Nil
Value of each share (Rs.)	100	Nil
Total paid up 0.5% Non-Cumulative Redeemable Preference share capital	51,28,22,000	*Nil

9. It is also stated that Company is not in arrears in repayment of deposits or the interest thereon and to that effect, a certificate dated 5th January, 2018 from the Auditor of the Company and also a declaration dated 5th January, 2018 from a Director of the Company are annexed to the

Application and marked as **Annexure-K**. It is further stated that the accounts maintained by the Company confirm to the accounting standards specified in Section 133 of the Companies Act, 2013 and to that effect a certificate dated 5th January, 2018 from the Auditor of the Company is also annexed to the Application and marked as **Annexure-L**.

10. The Computation of net worth of the Company pre and post approval of the Capital Reduction as furnished is shown below:

Particulars	Pre-reduction of Capital (INR) as on 31 March 2017	Post-reduction of Capital (INR)
Equity Share Capital (A)	51,50,000	51,50,000
0.5% Non-Cumulative Redeemable Preference share capital (B)	51,28,22,000	-
Total paid-up share capital (A+B)(E)	51,79,72,000	51,50,000
Add: Reserves & Surplus (C)	(40,47,49,679)	(40,47,49,679)
Transfer to Capital reserve on reduction (D)	-	51,28,22,000

Total Reserves & Surplus (C+D)(F)	(40,47,49,679)	10,80,72,321
Net worth (E+F)	11,32,22,321	11,32,22,321

11. It is also stated that there is no pending inspection, inquiry or investigation against the company under the Companies Act, 2013 or the Companies Act, 1956 and that no proceedings for winding up are initiated or pending against the Petitioner company.

12. Having admitted the application, the Petitioner was directed to publish the notice in accordance with Rule 3 of the NCLT (Procedure for reduction of share capital of company) Rules, 2016 once in "Business Standard" (English daily) and once in Aajkal (Bengali daily) and file an affidavit after such publication of notice annexing the original newspaper advertisement. The Petitioner was also directed to give notice to the Central Government, Registrar of Companies and also to all the creditors of the Company as on 31st January, 2018, which lists is annexed to the application and marked as **Annexure-H** through speed post and filed an affidavit along with proof of service as per Rule 3 of the aforementioned Rules.

13. As per the directions of this Bench, the Petitioner Company has issued a public notice in Form RSC-4, pursuant to Rule 3(3) of NCLT (Procedure for Reduction of share capital of the Company) Rules, 2016. The Petitioner Company also submitted an Affidavit in Form No. RSC-5 for publication of

notice duly notarized along with newspaper publication issued on 22nd February, 2018, in Business Aajkal in English edition, and in Aajkal in vernacular language.

14. The Regional Director, Eastern Region, representing the Central Government has filed an affidavit dated 17th May, 2018, stating that as per the report of the Registrar of Companies, West Bengal, no complaint and / or representation has been received by his office against the proposed petition for reduction of Non-Cumulative Redeemable Preference share capital of the Company and that the Petitioner company is also up to date in filing its statutory returns and having considered the said report, the Central Government has decided that petition/application need not be opposed and the matter may be decided by this Tribunal.

15. An affidavit dated 14th May, 2018 is submitted by the Petitioner company confirming that:

- a. the Company has not received any representations or objections from any persons or debtors or any Government authorities within three months from the date of publication of notice stipulated herein above till date.
- b. the Petitioner company has Unsecured Creditors as on 31st December, 2017 amounting of total of Rs.1,78,30,84,160/-. 96.82% of Unsecured Creditors of the Petitioner Company have duly confirmed and agreed to the terms and conditions of the said proposed reduction of share capital of the Company.

However, No representations have been received from the remaining Creditors.

- c. Copy of consent from each of the Creditor stating "No Objection" to the proposed reduction of share capital of the Company is annexed hereto and marked as "A".

16. Heard the matter.

17. The Ld. Advocate appearing for the petitioner has submitted that as per the directions of this Tribunal given on 13th February, 2018, he has filed affidavits of compliances, none of the creditors or shareholders have raised or filed any objection to the proposed reduction of Non-Cumulative Redeemable Preference share capital, and as such the petition/application be allowed approving the proposed reduction of Non-Cumulative Redeemable Preference share capital as resolved at the Extra Ordinary General Meetings held on 20th September, 2017, more fully described in para 12 of the application. The Assistant Director of Regional Directorate, Eastern Region, representing the Central Government has no objection to the petition.

18. Having regard to the facts and circumstances of the above case and since all the requisite statutory compliances having been fulfilled and that such reduction of Non-Cumulative Redeemable Preference share capital shall not cause any prejudice either to the members or the creditors of the Petitioner Company and the Regional Director, Eastern Region, representing the Central Government did not raise any objection to the

petition, the Company Petition bearing C.P.No.196/KB/2018 is allowed with the following directions:

- a. That the reduction of Non-Cumulative Redeemable Preference share capital of the above company resolved on and effected by Special Resolutions passed at the Extra Ordinary General Meetings held on 20th September, 2017 which resolution was in the words and figures as following viz.

"RESOLVED THAT pursuant to the provisions of Section 66 of the Companies Act, 2013 and National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016 and other applicable provisions, if any, of the Companies Act, 2013, and/or any modification(s) or re-enactment thereof, if any, and as provided in the Articles of Association of the Company and the sanction of the Hon'ble National Company Law Tribunal, Kolkata Bench ('NCLT'), and any other statutory authorities, as the case may be, the approval of the equity shareholders of the Company by a special resolution be and is hereby accorded to reduce upto a maximum of 51,28,220 (Fifty One Lakhs Twenty Eight Thousand Two Hundred and Twenty Two Only) Non-Cumulative, Redeemable Preference Shares of Rs. 100/- (Indian Rupees Hundred only) each held by VISA Realty Limited and VISA International Limited, out of the total existing Non-Cumulative Redeemable Preference Share Capital of the Company of Rs.

51,28,22,000/- (Indian Rupees Fifty One Crores Twenty Eight Lakhs Twenty Two Thousand Only) divided into 51,28,220 (Fifty One Lakhs Twenty Eight Thousand Two Hundred and Twenty Two Only) Non-Cumulative Redeemable Preference Shares of Rs. 100/- (Indian Rupees Hundred only) each fully paid up, and that such reduction is without consideration. Further, Non-Cumulative Redeemable Preference Shares held by VISA Realty Limited & VISA International Limited shall, without any application or deed, stand cancelled without any further application or deed, stand cancelled without any payment and simultaneously the Issued, Subscribed and Paid-up share capital of the Company shall stand reduced accordingly. The amount on cancellation of face value of Non-Cumulative Redeemable Preference Shares shall be adjusted to the Capital Reserve of the Company and shall also be deemed to form part of the reduction of capital in the manner proposed above.

RESOLVED FURTHER THAT for the purpose of giving effect to the above resolution and for removal of any difficulties or doubts, any of the Directors of the Company or the Company Secretary or any other person of the Company as may be nominated by the Board of Directors of the Company, be and is hereby authorised to do all such acts, deeds, matters and things as it may, in its absolute discretion deem necessary, expedient, usual or proper and/or make such adjustments in the books of accounts as are

considered necessary to give effect to the above resolution or to carry out such modification / directions as may be ordered by the NCLT to implement the aforesaid resolution.

be and the same is hereby confirmed.

- b. That the Minute appended to the petition is set forth in the Schedule hereto be and is hereby approved.
- c. That a certified copy of this order including the minute as approved be delivered to the Registrar of Companies, West Bengal within thirty days of receipt of the order as per provisions of sub-section (5) of Section 66 of the Companies Act, 2013 who shall register the same and issue a certificate to that effect in Form No. RSC-7 [Rule 6(3)].
- d. That the petitioner is given liberty, after receiving such certificate, to publish a Notice of Registration of Order and Minute once each in Leading English Newspaper and once in Vernacular Newspaper in Bengali having wide circulation in the State in which the registered office of the Company is located, within two weeks thereafter.
- e. The petitioner company shall comply with the statutory requirements, if any, required under the Companies Act, 2013 and the Rules notified thereunder as may be applicable.
- f. All concerned regulatory authorities to act on the certified copy of the order including the Minute forming part of the petition.

19. The CP No.196/KB/2018 is, accordingly, disposed of.

SCHEDULE

Form of Minute

"The paid-up Capital of VISA Minmetal Ltd is henceforth Rs.51,50,000/- divided into 5,15,000 Equity Shares of Rs.10/- each, fully paid up reduced from Rs. 51,79,72,000/- divided into 5,15,000 equity shares of Rs.10/- each, fully paid up and 51,28,220 Non-Cumulative Redeemable Preference Shares of Rs.100/- each fully paid. At the date of registration of this Minute the 51,28,220 Non-Cumulative Redeemable Preference Shares of Rs.100/- each held by VISA Realty Limited and VISA International Limited shall stand cancelled without any payment and simultaneously the Issued, Subscribed and Paid up Share Capital of the Petitioner Company shall stand reduced accordingly."

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(M. B. Gosavi)
Member (Judicial)

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