(2011) 03 MAD CK 0041

In the Madras High Court

Case No : C.P. No. 342 of 2010

In Re: Real Image Media Technologies Private Limited

Date of Decision : 23-03-2011

Acts Referred:
Companies Act, 1956 — Section 100, 101(2), 78

Citation : (2011) 03 MAD CK 0041

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : T.K. Bhaskar and M. Rajasekaran, Addl. Central Govt. Standing, for the Appellant;

Judgement

Vinod K. Sharma, J.—The Petitioner company seeks sanction to reduce securities premium account to the extent of Rs. 18,46,75,044/-

(Rupees Eighteen Crores Forty Six Lakhs Seventy Five Thousand and Forty Four only) out of Rs. 96,58,83,774/- (Rupees Ninety Six Crores

Fifty Eight Lakhs Eighty Three Thousand Seven Hundred and Seventy Four only).

2. The authorized share capital of the Petitioner company is Rs. 24,00,00,000/- (Rupees Twenty Four Crores only) divided into 1,65,00,000

equity shares of Rs. 10/- each and 75,00,000 preference shares of Rs. 10 each. The subscribed and paid up capital of the Petitioner company as

on 31.03.2010 was Rs. 16,47,03,110/- (Rupees Sixteen Crores Forty Seven Lakhs Three Thousand One Hundred and Ten only) divided into

90,26,700/- equity shares of Rs. 10/- each and 74,43,611 convertible cumulative preference shares of Rs. 10/- each.

3. There are 27 equity shareholders in the Petitioner company. In the Extra-ordinary general meeting of the shareholders, held on 28.07.2008, the

Article 5.7(a)(ii) of the Articles of Association was amended to enable the Petitioner company to reduce the securities premium account, subject to any authorizations and approval required under law. As per the amended Articles of Association, the company has by special resolution approved

the reduction of its securities premium account in any manner, subject to any authorization and approval as per law.

4. The Petitioner company, vide special resolution, passed at the extra-ordinary general meeting of the members, held on 15.11.2010, got

approval of the members for reduction in securities premium account.

5. The facts necessitating reduction of securities premium accounts read as under:

6a. The Petitioner company is inter-alia engaged in the business of providing high end technology for entertainment and media industry which

includes providing digital cinema solution. During the year 2005, the Petitioner incorporated a wholly owned subsidiary, M/s. Qube Cinema Inc.

(QCI) in United States of America. The Petitioner submits that wholly owned subsidiary (QCI) was incorporated as a United States Corporation

primarily to cater to the markets outside India in the digital cinema space. The Petitioner submits that the wholly owned subsidiary (QCI) had

created necessary infrastructure and recruited requisite manpower to cater to the requirements of the said markets. The funds for operations were

sent from time to time by the Petitioner company. The monies were treated as investment in the books of the Petitioner company. The Petitioner

further submits that the wholly owned subsidiary (QCI) had carried extensive marketing and was able to procure substantial business over the

years. However, since the customers wanted to deal with the parent company, all invoices were raised by Petitioner directly instead of through

subsidiary.

6b. During the year 2009, Petitioner entered into a transfer pricing agreement with the wholly owned subsidiary (QCI) for absorbing the costs

incurred by the subsidiary and also began passing on commission in respect of orders procured by the wholly owned subsidiary (QCI). Since the

costs were incurred by wholly owned subsidiary (QCI) in the initial orders, it incurred losses as a result of which there was diminution in the value

of the investment which the Petitioner had made in its wholly owned subsidiary (QCI).

6c. The Petitioner company proposes to adjust the value to the extent of Rs.

18,47,75,044/- from and out of the amount appearing in the securities

premium account of the Petitioner company as at 31st March 2010.

6. The Board of Directors of the company in its meeting held on 16.10.2010, in compliance with the provisions of Sections 78 and 100 of the

Companies Act, approved, subject to statutory and contractual approvals, including the approval of shareholders for adjustment/utilization of

amount not exceeding Rs. 18,47,75,044/- (Rupees Eighteen Crores Forty Seven Lakhs Seventy Five Thousand and Forty Four only), out of the

amounts lying in the securities premium account and also proposed to incorporate adjustment in the balance sheet of the company as on

31.03.2011. This was, however, subject to approval and confirmation by this Court.

7. After the proposed adjustment, the securities premium account will stand reduced to Rs. 78,11,08,730/- (Rupees Seventy Eight Crores Eleven

Lakhs Eight Thousand and Seven Hundred Thirty only) as on 31.03.2011.

8. Furthermore, upon implementation of the proposed adjustment in the securities premium account, the profitability of the Petitioner company

would be reflected more appropriately and the correct net worth of the company would stand reflected.

9. The reduction of securities premium account will not reduce the paid capital of the Petitioner company and will not have any adverse effect on

the interest of the creditors of the company. The reduction also does not violate any of the covenants including requirements on minimum asset

cover under the various borrowing agreements with lending institutions and banks.

10. This would also not affect the ability or liquidity of the company to meet its obligations/commitments in the normal course of business. The

proposed reduction would not in any way adversely affect the normal operations of the company and its ability to meet its commitments.

11. This Court had dispensed with the compliance of Section 101(2) of the Companies Act.

12. On notice, the Regional Director, Southern Region, Chennai, has filed no objection to the proposal made by the company. For the reasons

stated, reduction of securities premium account will be in the interest of the company and will not affect its creditors

13. For the reasons stated, this company petition is ordered.

14. The fee of the Central Government Standing Counsel is fixed at Rs. 5,000/- (Rupees Five Thousand only) to be paid by the Petitioner

company.