

---

**(2009) 09 GUJ CK 0018**

**In the Gujarat High Court**

**Case No :** Company Petition No"s. 69, 70 and 74 of 2009 in Company Application No"s. 93, 94 and 98 of 2009

**In Re: INCY Cybertech (P.) Ltd.**

---

**Date of Decision :** 02-09-2009

**Acts Referred:**

Companies (Court) Rules, 1959 — Rule 48 , 49, 50, 51, 53  
Companies Act, 1956 — Section 101(2)

**Citation :** (2010) 97 SCL 165

**Hon'ble Judges :** Jayant M. Patel, J

**Bench :** Single Bench

**Advocate :** Swati Soparkar, for the Appellant; P.S. Champaneri, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

Jayant Patel, J.—The present petitions are for seeking sanction to the Scheme of Amalgamation of M/s. INCY Cybertech Pvt. Ltd. (petitioner of Company Petition No. 69 of 2009), M/s. XMO Technologies Pvt. Ltd. (petitioner of Company Petition No. 70 of 2009), M/s. PBP Technologies Pvt. Ltd. (petitioner of Company Petition No. 71 of 2009), M/s. Ageek Stamp Pvt. Ltd. (petitioner of Company Petition No. 72 of 2009) and M/s. Umiya Financial Consultancy Pvt. Ltd. (petitioner of Company Petition No. 73 of 2009) (hereinafter referred to as "Transferor-Company/ies") with M/s. Khurana Builders Pvt. Ltd. (petitioner of Company Petition No. 74 of 2009) (hereinafter referred to as "Transferee-Company").

2. The Scheme of Amalgamation is produced at Annexure "C" of the petition.

3. In case of all the transferor-companies, vide order dated 23-3-2009 passed by this Court in Company Application No. 93 of 2009 to Company Application No. 97 of 2009, as the consent letters were produced, the meetings of equity shareholders and all unsecured creditors were dispensed with by recording the statements that there is no secured creditors of the concerned petitioner-companies.

4. In case of transferee-company, vide order dated 23-3-2009 passed by this Court in Company Application No. 98 of 2009, the meeting of the equity shareholders was also dispensed with, since the consent letters of all the equity-shareholders were produced for approval of the Scheme. Further, as the Scheme was to result into restructuring of the share capital in the form of reduction of share capital, this Court in the very order had observed that the procedure prescribed u/s 101(2) shall not be necessary and, hence, the procedure prescribed under Rules 48 to 65 of the Companies (Court) Rules, 1959 was ordered to be dispensed with.

5. All the petitions came to be admitted on 6-4-2009 and the publications were ordered in English daily, Indian Express (Ahmedabad Edition) and Sandesh, Gujarati daily (Ahmedabad Edition). Common publication was permitted in respect of all the transferor-companies, whereas for transferee-company, separate publication was ordered. Publication in the Government Gazette was dispensed with.

6. Notice was also issued to the Central Government through Regional Director, Department of Company Affairs, Mumbai, in all the petitions. Further, so far as the transferor-companies are concerned, additional notices were issued to the Official Liquidator for examination into the affairs of the company and the Official Liquidator was permitted to appoint Chartered Accountant for such purpose.

7. The affidavit has been filed by Mr. Dharmendra Mavjibhai Rathod, clerk of the learned Counsel dated 14-5-2009, stating that the order for publication has been complied with and the relevant extracts of the paper publications are also produced with the said affidavit. Further, in the additional affidavit filed on behalf of the petitioner-company dated 21-8-2009, it has been stated that the petitioner or its advocate has not received any objection from any person in response to the publication.

8. The Official Liquidator has filed reports in the petitions of all the transferor-companies together with the report of Chartered Accountant, Dharmendra Shah & Company. As stated by the Official Liquidator in the reports, on the basis of the information and according to the explanations given, the affairs of the transferor-companies have not been conducted in the manner prejudicial to the interest of its members or the public interest.

9. In response to the notice issued to the Central Government, affidavit dated 11-8-2009 has been filed by Mr. R.K. Dalmia, Dy. Registrar of Companies, based on the correspondence dated 6-8-2009 received by the Office of the Registrar of Companies, Gujarat from the Regional Director and as per the said affidavit, the Central Government has no opposition to the present petitions.

10. No other adverse circumstances are brought to the notice of this Court.

11. In view of the above, the present Scheme of Amalgamation at Annexure-C is sanctioned in accordance with the provisions of the Companies Act and the

minutes of the meetings as mentioned in para 15 of Company Petition No. 74 of 2009 are approved, by granting permission to put today's date.

12. The petitions are allowed accordingly.

13. The cost of the Central Government is quantified at Rs. 2,500 in each petition and the cost of the Official Liquidator is quantified at Rs. 1,500 in each petition of the transferor-companies.

14. It will be open to the concerned petitioner-company to pay the cost to the learned standing counsel, Mr. M. Iqbal Sheikh, by "Account Payee" cheque directly and it will also be open to the concerned petitioning company to pay the cost directly to the Official Liquidator by "Account Payee" cheque.