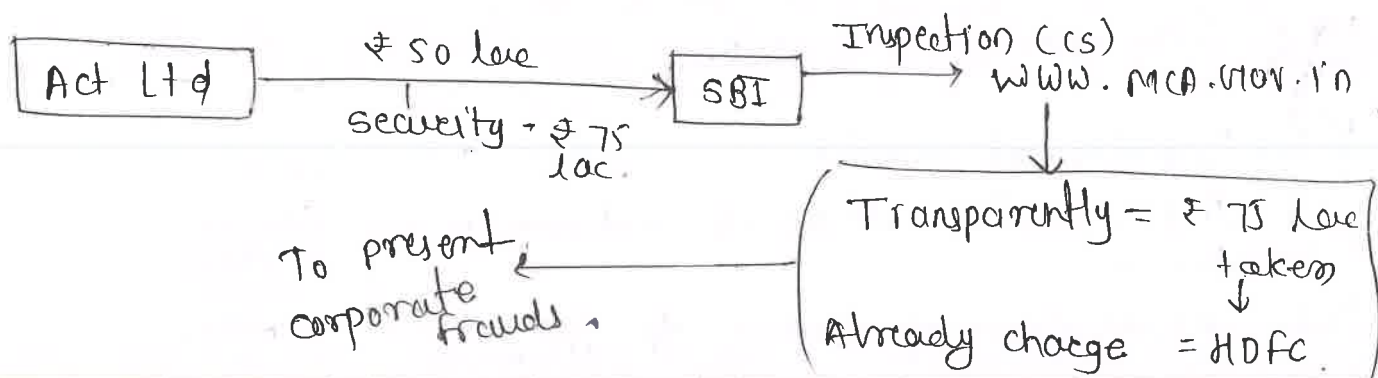
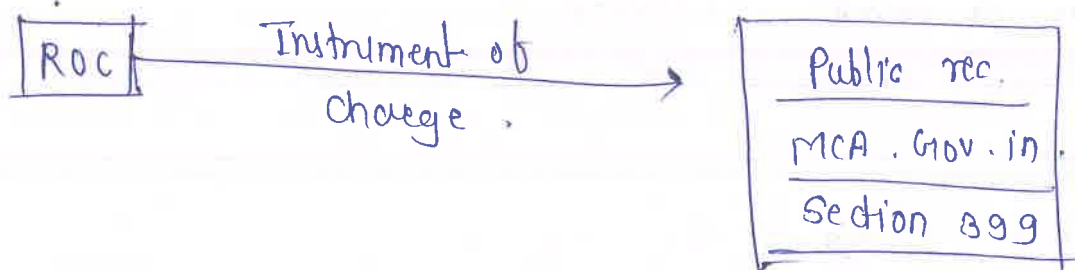
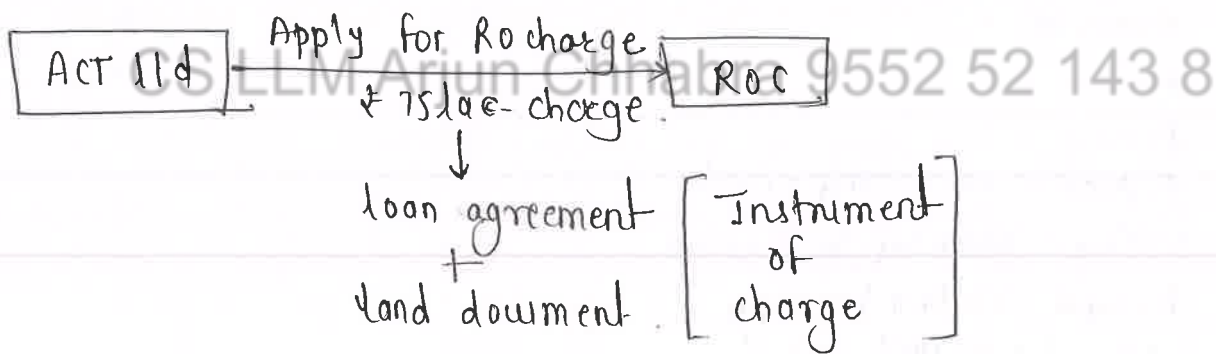
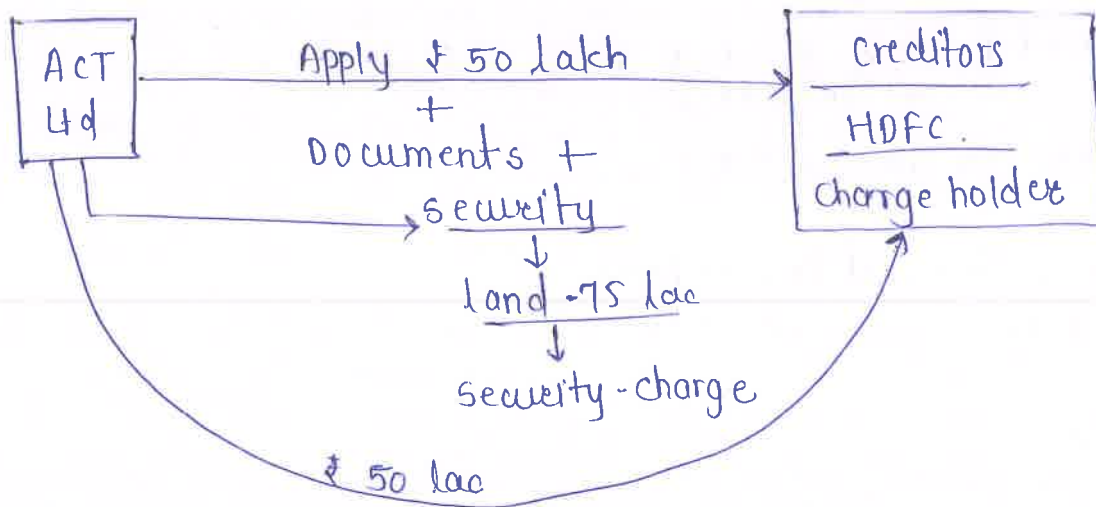


Chapter 6 - Registration of charges (Sec 77-87)

+
The companies (Registration of charges) Rules, 2014.
[Forms = CH1 1 - CH1 9]

Background / purpose



Charge

Meaning

Definition
[sec 2(16)]

Pledge

When
security is
created
on goods.
+
Possession of
goods
delivered

Mortgage

When
security
is on
immovable
property

Hypothecation

[Goods]
Possession
is
with
borrower

Means

Interest

or

Lien

on the

Property
or
asset

or

any of the
undertaking

or

Both

as a security

of the company.

Includes

Mortgage.

Section 77 - Duty to register charges, etc.

(1)

Legal obligation of every company to register charge within 30 days of creation to RoC.

+

① Proviso - condonation of delay for non-registration within 30 days.

+

② Proviso - condonation further time.

+

③ Proviso - What if charge is not registered but any subsequent charge is registered.

+

④ Proviso - Non-applicability of this section to certain charges.

(2)

Certificate of registration of charges.

(3) + (4)

Effects of non-registration of charges.

+

Sec 86

↓
Penal provision.

Time limit for registration of charges.

Before
2.11.18

on or after
2.11.18

Original time =
30 days from
creation + Normal fees

↓
300 days from
creation +
Add. fees or
6 months from
2.11.18

— " —
↓
within 60 days
from creation +
Additional fees
↓
further 60 days
+ Additional fees.

* History

① 2.11.2018 → Companies (Amendment) ordinance, 2018.

② 12.1.2019 → Companies (Amendment) ordinance, 2019

③ 31.7.2019 → Companies (Amendment) Act, 2019.

↳ Effect → Retrospective → 2.11.2018

- a] Where a Company creates a charge on any of its asset, property or undertaking, it shall be the duty of co. to register such charge.
- b] Sec 77 requires registration of every charge created on any property of the company, whether such property is -
- i] Movable or immovable.
 - ii] Tangible or intangible.
 - iii] Situated in india or outside india.
- c] The charge shall be registered with the registrar within 30 days of its creation.
- d] The charge shall be registered in form no. CHG 1 [for deposits other than debenture] or form no. CHG 9 [for debentures including rectification].
- e] The prescribed Form containing the particulars of charge shall be signed by the company and the chargeholder.
- f] The instrument creating the charge [for ex.- loan agreement] if any, shall also be filed with the registrar.

[Provision 1 & 2] Condonation of delay for non-registration within 30 days.

Case I

charge created before the Commencement of the Companies [Amendment], Act 2019.

[Before 2.11.2018]

- a] The company may make an application to the registrar for condonation of delay.
- b] The registrar may allow the registration of the charge after 30 days of its creation but within 300 days of creation of charge.
- c] The company shall pay addition fees as may be prescribed.

d] If the charge is not registered within 300 days of creation of charge as per point a, b & c above, the charge shall be registered within 6 months from the date of commencement of companies (Amendment), on payment of addition fees as prescribed.

Case II

on or after 2.11.2018

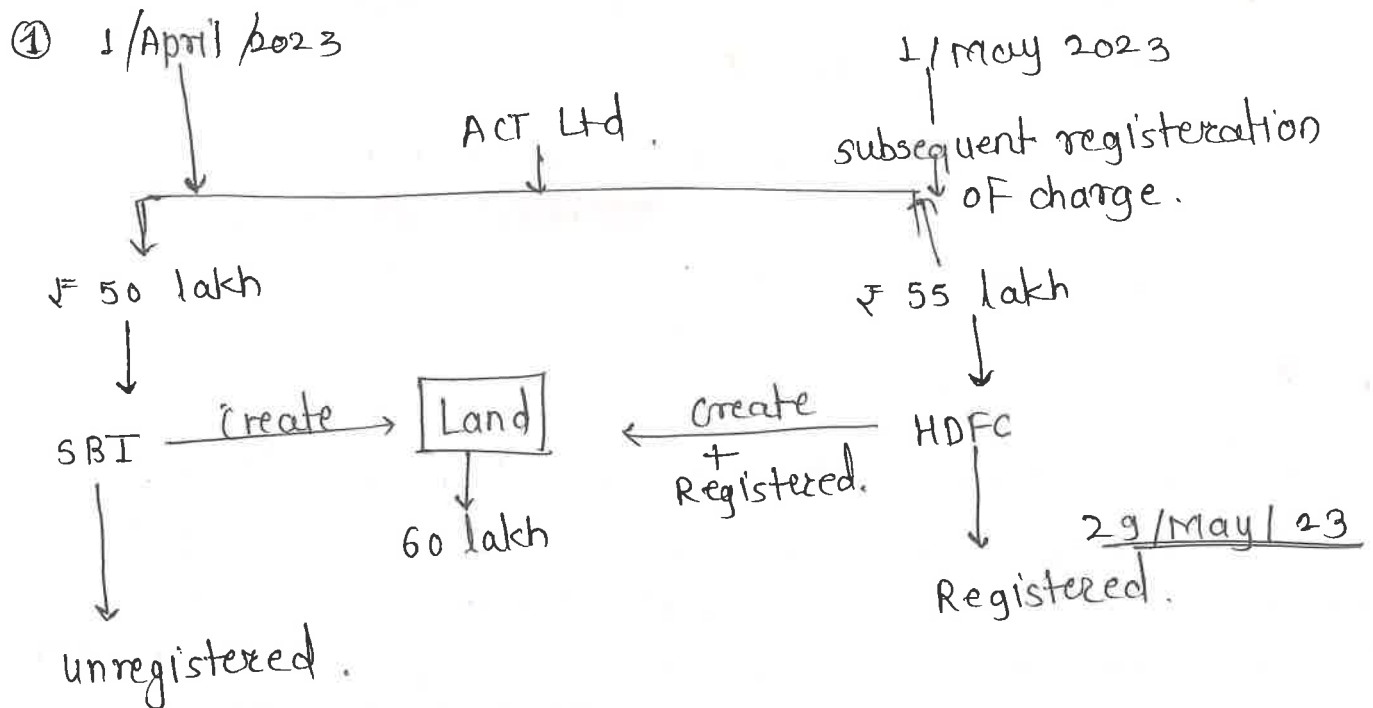
a] — " —

b] The registrar may allow the registration of charge after 30 days of its creation but within 60 days of creation of charge, on payment of such additional fees by the company as may be prescribed.

c] If the charge is not registered within 60 days of creation of charge the registrar may on an application, allow such registration to be made within further period of 60 days after payment of Such additional fees as may be prescribed.

SS 1 Proviso-3

Provided also that any subsequent registration of charge shall not prejudice (harm/affect) any right acquired in respect of any property before the charge is actually registered.



CS LLM Arjun Chhabra 9552 52 143 8

ACT - liquidation

55 lakh → Right of HDFC to recover.

In simple Words

If the company creates a subsequent charge (i.e. even if it is registered within the extended period instead of original 30 days), such subsequent registered charge shall have priority over the previous unregistered charge.

Proviso 4

Provided also that non-applicability of sec 77 to such charge as may be prescribed by CRI in consultation with RBI.

6x a charge is registered with the registrar u/s 77 or 78, registrar shall issue a certificate of registration of charge in form no CHG-2

b] Where the particulars of modification of charge is registered u/s 79, the registrar shall issue a certificate of modification of charge in form no CHG 3

c] certificate of registration of charge and modification of charge issued by Roc shall be conclusive evidence that requirement of chapter 6 have been complied with.

Subsection 3

Notwithstanding anything contained in any other law for the time being in force, no charge created by company shall be taken into account by the liquidator appointed under this Act ~~or~~ IBC 2016, as the case may be or any other creditor unless it is duly registered u/s 1 and certificate of registration is given by registrar.

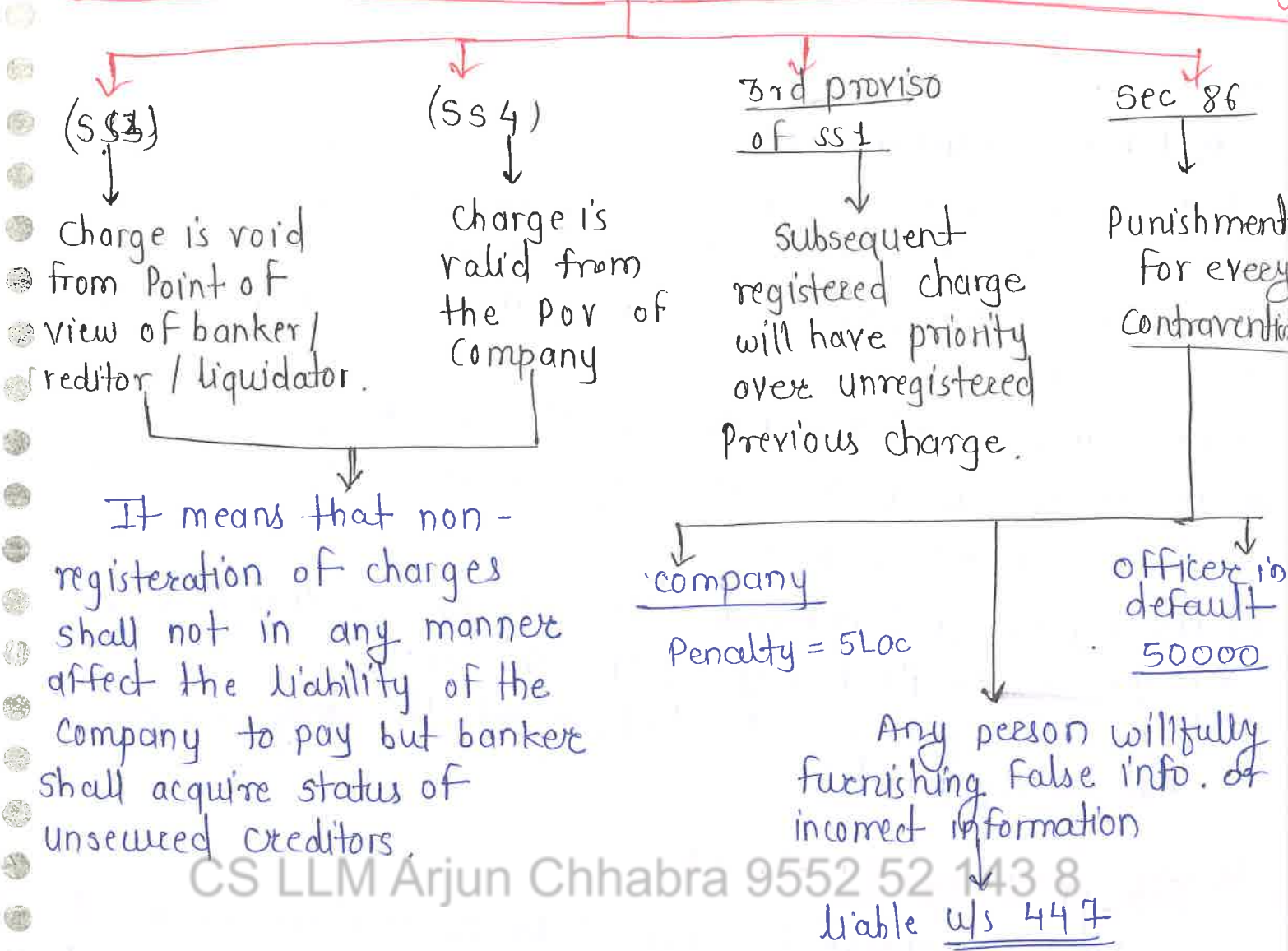
In simple words, this means the charge will become void against the liquidator and other creditors of the company. At the time of winding up, the creditor whose charges has not been registered will be reduced to the level of an unsecured creditor. Neither the liquidator nor any other creditor will have legal recognition to a charge that is not registered.

Subsection 4

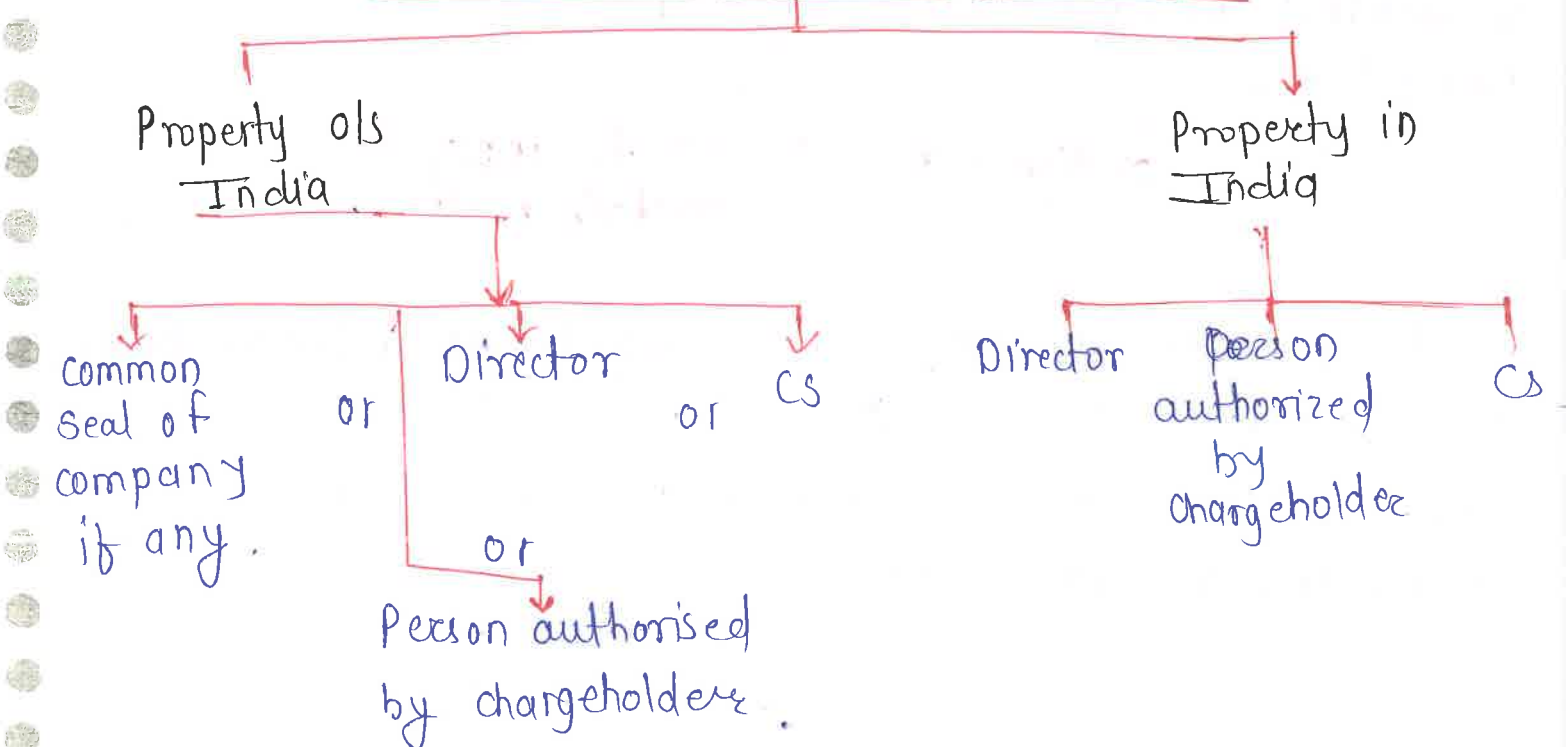
Nothing in ss3 shall prejudice any contract or obligation for the repayment of money secured by a charge.

In simple words, this means that the debt is valid and may be enforced against the company through the courts by filing a suit, but the security is lost.

Conclusion Chart - ss 3 & ss 4 - consequences of non registration of charge



Verification of Instrument of charge



Section 78 - Application for registration of charge.

Legal provisions relating to registration of charge by charge holder -

- a] Where a company fails to register any within 30 days of its creation, the charge holder may make an application to the registrar for registration of charge.
- b] The application shall be made in the same form, manner, time as prescribed.
- c] The registrar shall give notice to the company.
- d] The registrar may, within 14 days, allow the registration of the charge, on payment of such fees as may be prescribed.
- e] The registrar shall not allow the application of chargeholder $\Rightarrow$
 - a] The company itself registers the charges; or
 - b] The company shows sufficient cause that the charge should not be registered.

Proviso - Recovery of fees paid

Where a charge is registered by the registrar on an application made by the chargeholder, the chargeholder shall be entitled to recover from company the fees paid by him to registrar.

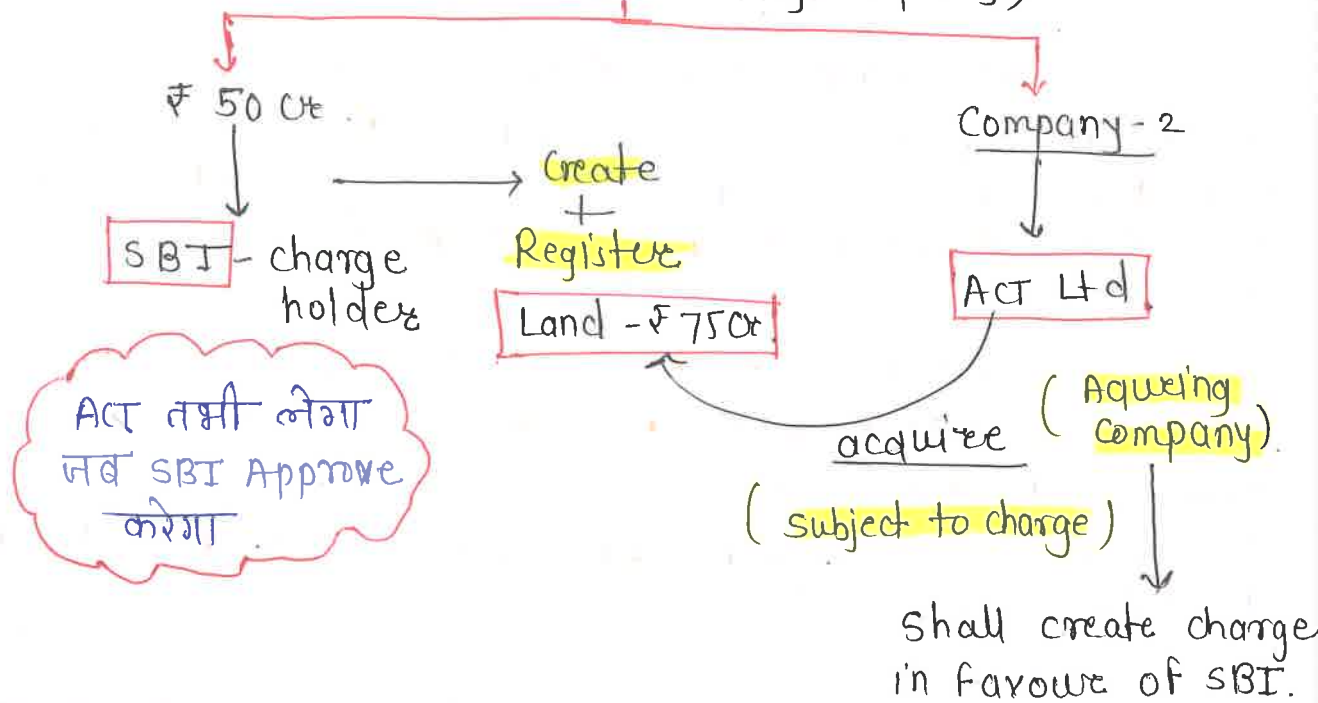
Section 79 - Sec 77 to apply in certain matters

The provision of section 77 relating to registration of charges shall, so far as may be, apply to -

- a] A company acquiring any property subject to a charge within the meaning of that section.

Example -

Reliance Industries Ltd
(charge creating company)



In simple Words,

→ In case of property where charge is registered & if it is sold with the permission of holder of charge it shall be duty of company acquiring it to get charge registered as per Sec 77.

→ In other words, the earlier charge should get vacated and, in its place, new charge should get registered by co. which has acquired it.

★ Any modification in terms or condition or the extent or operation of any charge registered under that section.

Special Note - Change in Interest by RBI does not amount to modification in terms and conditions of charge, department of companies affairs has also advised the same.

Sec 80

Register of charges to be kept by Registrar.

[Read with section 399 of Act]

Date of Notice of charge.

All charges registered with the registrar are public documents. This means that any person who wishes to lend money to the company against the security of such property or buy it can refer to the MCA portal and find out if there is any charge created on that asset.

In case he enters into the transaction without making any enquiry and later on suffers loss because of charge, He can't claim the loss from the company for it.

Such person shall be deemed that he had notice of charge from the date of such registration.

Sec 81 - Register of charges to be kept by Registrar

Roc is required to maintain Register of charges.

Register open for inspection by any person on payment of Prescribed fees

₹ 100

can be inspected electronically on website i.e. www.mca.gov.in

particulars of charges maintained on MCA Portal shall be deemed to register of charges.

Section 82 - Company to report satisfaction of charge.

ss(1)

Time limit for giving info. intimation.

+

Proviso - Condonation of delay for not giving intimation within 30 days.

ss(2)

Procedure adopted by the registrar.

+

Proviso - no need to send notice to Chargeholder.

ss(3)

Notice by Roc of show cause to company.

ss(4)

Power of registrar to record Satisfaction in other cases.

Where no intimation is received.

SS1 Time limit

a] Where a registered charge paid or satisfied in full, the company shall give an intimation to the registrar or in case of default by company the chargeholder shall intimate to the registrar.

b] The intimation shall be given in CHG-4 within 30 days from the date of such payment or satisfaction.

c] Where the registrar enters a memorandum of satisfaction of charge in full in pursuance of sec 82 or 83, He shall issue a certificate of registration of satisfaction of charge in form no. CHG-5.

Proviso -

a] Where a registered charge paid and satisfied in full, but the co. does not give to registrar an intimation of such payment or satisfaction within 30 days, the company or the chargeholder may make an application to the registrar on condonation of delay.

b] The registrar may allow such intimation of payment or satisfaction to be made within 300 days of such payment or satisfaction.

c] The company or the chargeholder, as the case may be, shall pay such additional fees as may be prescribed.

SS2 - Procedure adopted by registrar.

a] on receipt of such intimation, the registrar shall issue a notice to the chargeholder requiring him to show cause as to why the satisfaction of charge should not be recorded.

b] If the chargeholder does not show cause within the time specified in the notice (not being more than 14 days), the registrar shall -

1] Record the satisfaction of charge in the registrar of charges maintained by him; and

2] Inform the company that the satisfaction of charge has been recorded.

c) Notice to the chargeholder is not required where the intimation to the registrar is given in CHG-4 and is signed by the chargeholder.

SS3 - Where any cause shown by chargeholder

Where any cause is shown by chargeholder, the registrar shall -

① Record a note to that effect in the register of charges maintained by him.

② Inform the company regarding the cause shown by chargeholder.

SS4

The power of the registrar to record satisfaction of charges u/s 82 shall not affect,-

① The power of the registrar to record satisfaction of charges u/s 83; or

② The power of the registrar to record satisfaction of charges otherwise than on receipt of any intimation from company.

Section 83 - Power of Registrar to make entries of satisfaction and release in absence of intimation from company.

SS1

Case where registrar may record satisfaction of charges in the absence of intimation of company.

SS2

Notice to Party

Within 30 days of recording satisfaction of charge in the register of charges, The registrar shall inform the affected parties regarding recording of satisfaction of charge.

551 - If,

the registrar is satisfied (on the basis of evidence) produced before him that in relation to a registered charge -

- 1] That has been repaid in full; or
- 2] The property charged has been released from the charge; or
- 3] The property charged has ceased to be the property of the company.

then -

- 1] The registrar may record the satisfaction of charge in the registration of charges maintained by him.
- 2] Notwithstanding the fact that no intimation of satisfaction of charge has been given to him by the company.

Sec 84 - Intimation of appointment of receiver or manager.

551 - Notice of Appointment of receiver or manager.

If -

- a] Any person obtains an order from the court to appoint a person as a receiver or manager of any property of the company which is subject to charge; or
- b] Any person, by any power contained in any instrument, appoints a person as a receiver or manager of any property of the company, which is subject to charge.

then -

- 1] Such person shall, within 30 days, give a notice to the company and the registrar along with a copy of such order or such instrument; and
- 2] The registrar shall register the same.
- 3] The notice of appointment or cessation shall be in form no CHG-6.

552 If the person appointed as a receiver or manager ceases to hold his office,

- 1] He shall give a notice of such fact to the co. & the registrar; &
- 2] The registrar shall register the same.

Section 85 - Company's Register of Charges

Every company shall.

Every company shall

SS1

keep at its R.O register
of charges in form no CH07

+

Copy of Instrument
creating the charge.

SS2

Inspection open
during (business hours)

without
fees

↓
members
or
creditors

with fees
prescribed in

AOA

↓
other
person,

CS LLM Arjun Chhabra 9552 52 143 8