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## Chapter VI

# REGISTRATION OF CHARGES

## 1. INTRODUCTION

Section	Provisions covered in the chapter
77	Duty to register charges
78	Application for registration of charge
79	Registration of charge in Specific Certain matters
80	Date of Notice of charge
81	Register of Charge to be kept by ROC
82	Satisfaction of Charge by Company (Report)
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85	Register of Charge to be kept by Company
86	Punishment for Contravention
87	Rectification of Charge by CG in the Register

Chapter VI	Consists of sections 77 to 87 as well as the Companies (Registration of Charges) Rules, 2014.
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### 1.1 Section 2(16) - CHARGE



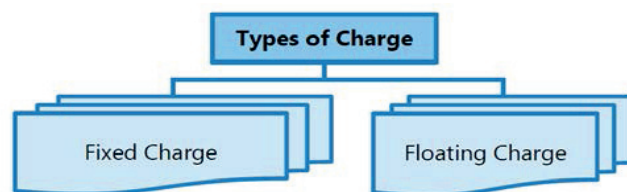
- A “charge” is an interest or lien created
  - on the property or assets of a company or
  - any of its undertakings or both
  - as security and includes a mortgage.
  - Whenever a company borrows money by way of loans, including term loans or working capital loans, from financial institutions, banks, or any other person
  - by offering its property or assets as security or any of its undertakings,
  - Then a charge is created on such property or assets in favour of the lender.
- Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013, in accordance with Chapter VI and the Rules made in this regard.

1. An interest or lien created on the property or assets of a company or any of its undertakings or both as security is known as:
  - a. Debt
  - b. Charge
  - c. Liability
  - d. Hypothecation

**Difference between Mortgage, Pledge and Hypothecation**



**1.2 TYPE OF CHARGES**



A charge may be either fixed or floating.

Fixed or Specific Charge	Floating Charge
Created on some specific or identifiable property of the company	Created on a class of assets which are fluctuating in nature means it is a charge that floats above ever-changing assets.
<b>Example :</b> Fixed Assets, which are permanent in nature, like PM, LB, etc.	<b>Example:</b> Current Assets – Stock in trade, Raw material, debtors, bill receivable, etc.
Assets are identified at the time of creation and thus can't be changed once created.	Asset can be changed as it is in a class of asset (PRESENT & FUTURE) means assets are not definite.

The borrowing company is not permitted to sell such assets during the period of charge, though it may use them.	The borrowing company is permitted to use them for trading or producing final goods for sale.
Assets under fixed charge can be sold only with the permission or consent of the charge-holder.	Consent of the charge holder is not required, as they keep on changing.
Crystallisation is not possible	Crystallisation is possible means it can be converted into a fixed charge
A fixed charge is usually created by way of a mortgage or by deposit of title deeds.	Thus, unlike a fixed charge, the assets offered as security by the company can be dealt with by it in the ordinary course of business. The buyer of the asset will get it free of charge.

**Example:**

*Pearl Electronics Limited raised a term loan of Rs. 10 lakh from Everest Commercial Bank Limited, against the security of its office building. In this case, the company shall create a charge on specific asset i.e. its office building and such charge shall be a fixed charge. The company can sell this particular office building either by repaying the borrowed amount in full or after seeking permission from the charge-holder i.e. lender bank.*

**Example:**

*A retail showroom in Lajpat Nagar, New Delhi, contains numerous articles like clothes, apparel, footwear, kitchen items, cosmetics, etc., kept for sale. The owner of the showroom might have borrowed against the security of all these goods; but he may still sell or otherwise deal with them in the ordinary course of business. The buyer i.e. customer will get the items purchased by him free of charge.*

*Example: Smart Shoes Limited manufactures leather goods. The raw material in the form of leather, which is subject matter of floating charge, may be used by the company to manufacture leather goods without seeking any permission from the lender.*

### 1.3 CRYSTALIZATION OF A FLOATING CHARGE

- A **floating charge** is a security interest over a pool of changing assets like raw materials or stock-in-trade. It remains *dormant* until it *crystallizes*.
- **Crystallization** means that the floating charge becomes a **fixed charge** on the assets of the company.
- This usually happens in the following situations:
  - **Breach of terms and conditions** of the floating charge.
  - The **company goes into liquidation**.
  - The **company ceases to carry on business**.
  - The **creditor enforces the security** under the floating charge.
- Once crystallized, the security becomes **fixed on the available assets as on that date**. These assets are then available for realization by the lender.
- The proceeds from the realization of these assets are used to **repay the borrowed money**.

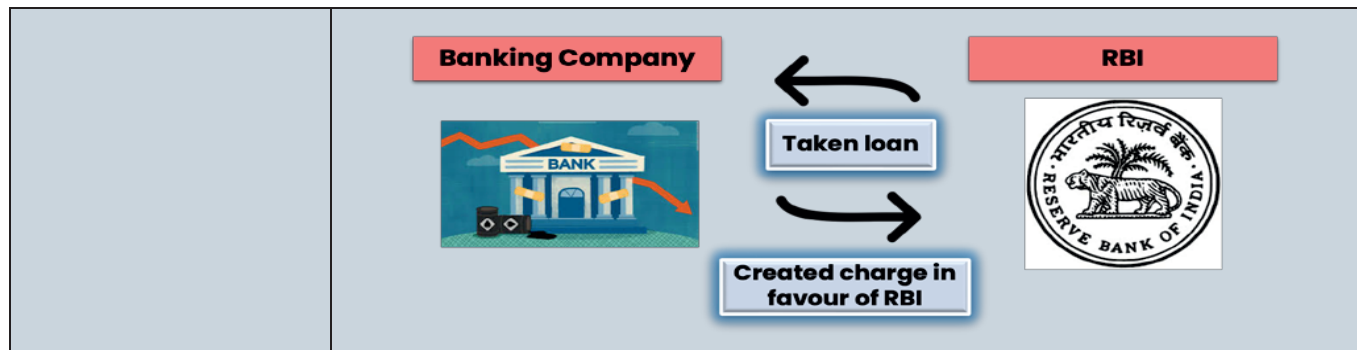
*Example: Prism Limited had taken a loan from ABC Bank, on the security of its stock. Now, in the event of Prism Limited failing to repay the security interest or entering liquidation, the floating charge will change to a fixed charge. Once a floating charge gets converted to a fixed charge, the stock can neither be sold nor used by the company in its business operations.*

## 2. SECTION 77 DUTY TO REGISTER CHARGES, ETC.

<b>Duty to Register Charge</b> <b>Section 77(1)</b>	<ul style="list-style-type: none"> <li>● Company creating a charge</li> <li>● within or outside India</li> <li>● on its property, assets, or undertakings</li> <li>● tangible or intangible</li> <li>● must register the particulars of the charge</li> <li>● with the Registrar of Companies (ROC).</li> </ul>
<b>Location of Assets</b>	Assets charged may be located within or outside India.
<b>Nature of Assets</b>	<ul style="list-style-type: none"> <li>● <b>Tangible Assets:</b> Land, building, machinery, etc.</li> <li>● <b>Financial Assets:</b> Shares, debentures, etc.</li> <li>● <b>Intangible Assets:</b> Patents, trademarks, copyrights.</li> </ul>
<b>Deposit of Title Deeds</b>	<p><i>Note: The word 'otherwise' when used in a section would have the effect of widening the scope and operation of the provision.</i></p> <p><i>Charges created by deposit of title deeds (common with banks) are also registrable.</i></p>

<b>Who Can Register</b>	<ul style="list-style-type: none"> <li>● Company (Borrower) creating a charge (Primary duty)</li> <li>● Charge-holder (Lender) under Section 78 if the company fails</li> <li>● Purchaser of property with an existing charge under Section 79</li> </ul>
<b>Forms for Registration</b>	<p style="text-align: center;"><b>CHG1 – For charges (other than debentures)</b> <b>CHG9 – For charges on debentures</b></p> <ul style="list-style-type: none"> <li>● Together with a copy of the instrument, if any, duly signed by the company and the charge holder</li> </ul>
<b>Time Limit for Registration</b>	30 days from creation of charge along with the prescribed fee.
<b>Certificate of Registration Section 77(2)</b>	<p style="text-align: center;"><b>CHG2</b> <b>Certificate of Registration</b></p> <ul style="list-style-type: none"> <li>● On registration of charge, the ROC will issue a certificate of registration to the company and charge holder.</li> <li>● It's a conclusive evidence once certificate is obtained</li> </ul>
<b>Verification of Instrument Rule 31</b>	<p><b>A copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar, shall be verified as follows:</b></p> <p><b>Where the instrument or deed relates solely to the Property outside India: Verified under the hand of -</b></p> <ul style="list-style-type: none"> <li>● Seal of the company or</li> <li>● Director/CS/Authorised officer of the charge-holder or</li> <li>● some person other than the company who is interested in the mortgage or charge</li> </ul> <p><b>Where the instrument or deed relates to the property in India (whether wholly or partly). Verified under the hand of -</b></p> <ul style="list-style-type: none"> <li>● Director/CS/Authorised officer of the charge-holder</li> </ul>
<p><b>Note: Thus, in case the instrument or deed relates solely to a property situated outside India, the copy may also be additionally verified by a certificate issued under the hand of some person other than the company who is interested in the mortgage or charge. This type of verification is not possible when the instrument or deed relates to the property situated in India, whether wholly or partly.</b></p>	

<b>Extension of Time Limit</b>	
<p><b>Charges created before 02-11-2018 -</b></p> <div style="text-align: center;"> <p><b>Charge Created before 02-11-2018</b></p> <p>↓</p> <p>Register charge within 30 days of creation</p> <p>↓</p> <p>If not registered within 30 days</p> <p>Register within 300 days of creation on payment of additional fees</p> <p>↓</p> <p>If not registered within 300 days</p> <p>Register within six months from 02-11-2018 with additional fees. Different fees for different classes of companies are applicable.</p> </div>	
<div style="text-align: center;"> <p><b>Charge created after 2/11/2018</b> Within 30 + 30 days = Total 60 days (with additional fees)</p> <p><b>After this</b> <b>Further</b> period of 60 days 60 + 60 days = (with Ad valorem fees)</p> <p style="background-color: #d9e1f2; padding: 2px;">Total 120 days</p> </div> <div style="text-align: center;"> <p><b>Charge Created on or after 02-11-2018</b></p> <p>↓</p> <p>Register the charge within 30 days</p> <p>↓</p> <p>If not registered within first 30 days</p> <p>Register in next 30 days (<i>i.e.</i> within 60 days from creation of charge) with additional fees</p> <p>↓</p> <p>If not registered in next 30 days</p> <p>Register within a further period of sixty days with <i>ad valorem</i> fees</p> </div>	
<b>Procedure for Extension</b>	<ul style="list-style-type: none"> <li>● Application in CHG-1 / CHG-9 along with</li> <li>● a declaration by the Director/CS ensuring no adverse effect on intervening creditors.</li> <li>● ROC may allow if sufficient cause is shown.</li> </ul>
<b>Certificate of Registration</b>	ROC issues Certificate of Registration/Modification, which is conclusive evidence of compliance with provisions.
<b>Exemption (Section 77 does not apply)</b>	Certain charges created by banking companies in favour of the RBI (e.g., under Section 17(4)(d) of the RBI Act, 1934) are exempt from these provisions.



**Note - Ad Valorem Fee is a fee which is based on the value of the charge (loan amount secured by the charge).**

1. Eztech Machines Limited owns a plot of land, which was mortgaged to Urbane Commercial Bank Limited for raising a term loan of ₹ 2.00 crore. The mortgage was duly registered with the Central Registry. First loan installment of ₹ 50.00 lacs was released immediately after sanction of term loan with the condition that the subsequent three installments of ₹50.00 lacs shall be released as soon as the earlier released installment is utilized satisfactorily. Is it necessary either for the company or the bank to register the charge on plot with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry?  
(RTP NOV 2019)
  - a. It is not necessary either for the bank or the company to register the charge on plot of land with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry.
  - b. It is necessary to get the charge on plot on land registered with the concerned Registrar of Companies (ROC) irrespective of the fact that mortgage is registered with the Central Registry.
  - c. The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the actual liability of the company with the Bank exceeds ₹ 1.00 crore.
  - d. The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the term loan sanctioned by the bank to the company exceeds ₹ 2.00 crores.
2. A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of ₹ 1.00 crore availed from Next\_Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16th February, 2019. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law, and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. Advise the company regarding the latest date within which it must register the charge with the ROC so that it is not required to pay a specific type of fees for charge registration.  
(RTP NOV 2019)
  - a. With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 27th April, 2019.

- b. With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 17th April, 2019.
- c. With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 2nd May, 2019.
- d. The company cannot now get the charge register as the time prescribed by Law has expired.
3. Cyplish Games and Toys Limited was sanctioned a term loan of ₹ 60.00 lacs by Zawnn Industrial Bank Limited on 21st November, 2018. As a security, the company offered its office premises situated at Bandra, Mumbai and an

instrument of charge was executed. However, the company failed to get the charge registered with the concerned Registrar within the first as well as second statutory period available as per law. This was adversely commented by the internal auditors of the bank and therefore, after a strict advisory received from Shahji, the senior manager of the bank, the company was prompted to take steps for registration of charge. Name the specific type of fees which the company is now required to pay for registration of charge.

(RTP NOV 2019)

- Special Fees.
- Ad-valorem Fees.
- A Late Registration Fees.
- Ad-valorem Duty.

### 3. Section 77 (3) & (4) – CONSEQUENCES OF NON REGISTRATION OF CHARGE

<b>Non-Recognition of Charge</b>	If <b>not registered</b> , the charge is <b>void against (if the company goes into winding up)</b> <ul style="list-style-type: none"> <li>● <b>Liquidator</b> (under Companies Act, 2013 or IBC, 2016)</li> <li>● <b>Other creditors</b></li> </ul>
<b>Status of Creditor</b>	● The creditor becomes an <b>unsecured creditor</b> in case of liquidation/winding up.
<b>Validity of Debt</b>	<ul style="list-style-type: none"> <li>● The debt <b>remains valid</b>; it can be enforced <b>through courts by filing a suit</b>, but <b>security is lost</b>.</li> <li>● Means Contract of charge becomes void, but Contract of loan remains valid – means payable immediately</li> </ul>
<b>Offence under Companies Act</b>	● Non-registration <b>does not absolve</b> the company from <b>penalties/offences</b> under Chapter VI of the Companies Act, 2013.
<b>Loss of Priority</b>	<ul style="list-style-type: none"> <li>● Priority is <b>lost</b> to other charges registered before the date of actual registration.</li> <li>● Even <b>registration within extended time</b> won't protect against prior rights acquired.</li> </ul>

**Example:** Bank A advanced Rs. one crore to Vasudha Medicos Limited against the security of the company's land and building at Mulund. The charge was created by the deposit of title deeds on 1st June 2024. The company did not register the charge within 30 days. Subsequently, the charge was registered on 12th August 2024 after payment of ad valorem fees and providing sufficient cause.

In the meantime, Bank B advanced Rs. two crore to Vasudha Medicos Limited against the security of the same property on 18th June 2024. This charge was duly registered on 26th June 2024.

Subsequently, Vasudha Medicos Limited goes into liquidation and the property realises only Rs. two crore.

In such a situation, Bank B will get repayment of its loan in full, but Bank A will not realise anything because the subsequent registration of the charge in favour of Bank A will not prejudice the right of Bank B, which obtained its right before the charge in favour of Bank A was actually registered. Thus, Bank B gets priority over Bank A even though its charge was created later.

#### 4. SECTION 80 – DEEMED NOTICE OF CHARGE

<b>Public Document</b>	<ul style="list-style-type: none"> <li>All registered charges are <b>public documents</b> accessible through the <b>MCA Portal</b>.</li> <li><b>Section 80:</b> Any person acquiring property with a registered charge is <b>deemed to have notice</b> from the <b>date of registration</b>.</li> </ul>
<b>Purpose of Public Access</b>	Enables potential <b>lenders</b> or <b>buyers</b> to check if the property is already <b>charged</b> before lending or buying.
<b>Constructive Notice</b>	<ul style="list-style-type: none"> <li>Means 'deemed <b>knowledge</b>' of the charge.</li> <li>Even if a person <b>hasn't checked the records</b>, they are <b>deemed to have notice</b> of the charge by law (legal fiction).</li> </ul>
<b>Relevant Certificates</b>	<ul style="list-style-type: none"> <li><b>CHG-2:</b> For <b>fresh registration</b> of charge.</li> <li><b>CHG-3:</b> For <b>modification</b> of charge.</li> </ul>
<b>Responsibility of Third Party</b>	It's the <b>duty</b> of <b>every person</b> proposing to deal with a company to <b>check the ROC records</b> for charges <b>before</b> entering the transaction.
<b>Effect of Ignorance</b>	If a person <b>fails to check</b> and suffers a loss due to the charge, <b>he cannot claim the loss</b> from the company.
<b>Prevention of Fraud</b>	<b>Compulsory</b> registration helps prevent a company from <b>fraudulently offering the same asset as security</b> to multiple lenders.

**Example:** Vishnu Marketing Limited obtained a term loan of rupees fifty lakh from Alpha Commercial Bank Limited by creating a charge on one of its office buildings and got the charge duly registered. Later on, if the building is sold to another person, say Neeraj, then he is deemed to have notice of such charge. In other words, it shall be presumed that Neeraj knew beforehand that the building was mortgaged to the bank for obtaining a loan. Therefore, Neeraj cannot plead against such presumption by contending that he did not know about the charge if he suffers any loss at a later date because of the mortgage.

1. Any person acquiring property (on which charge is registered under section 77) shall be deemed to have notice of the charge from:
  - a. Thirty days of such charge
  - b. Date of application for charge
  - c. Date of acquiring the property
  - d. Date of such registration

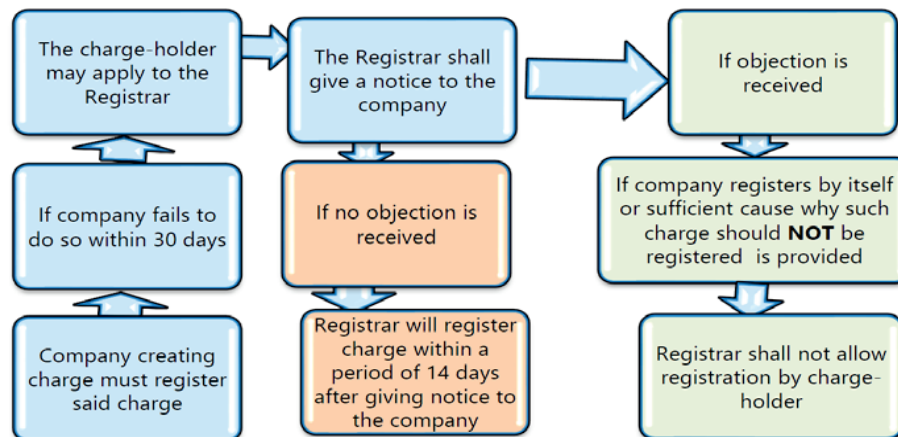
## 5. Section 78 APPLICATION FOR REGISTRATION OF CHARGE BY CHARGE-HOLDER

It can be seen from the above discussion that non-registration or delayed registration would seriously affect the interest of the charge-holder.

Therefore, the law provides the charge-holder an opportunity in this respect.

This section empowers the holder of charge to get the charge registered in case the company creating the charge on its property fails to do so.

- Where a company fails to register a charge within 30 days
- Then Charge Holder may make an application to ROC
- ROC may intimate to Company
- ROC within 14 days allow registration of charge in prescribed time, form and manner (payment of such additional fees)
- If company itself registers the charge or shows sufficient cause that the charge should not be registered then ROC shall not register the same.
- **Recovery of fees:** Charge Holder may recover such fees or additional fees from the company paid by him to ROC



1. With a view to augment its production, Surya Techno-Products Limited availed a loan of ₹ 50.00 lacs from Shrilaxmi First Bank Limited for purchase of a new machinery by offering its factory worth ₹ 2.25 crores as security. However, the company did not initiate any steps to get the charge on factory registered in favour of lending banker within the specified time. As soon as the charge-holder bank came to know about the non-registration of charge with the ROC, it applied to the Registrar for registration of charge along with the instrument creating the charge and paid the requisite fees when demanded. Advise the bank whether it can recover the fees so paid for registration of charge from Surya Techno-Products.

(RTP NOV 2019)

- a. Yes, the bank can recover the fees paid by it for registration of charge.
- b. No, the bank cannot recover the fees paid by it for registration of charge because the bank is equally responsible for getting the charge registered.
- c. Only when it obtains recovery orders from Regional Director (RD), the bank can recover the fees paid by it for registration of charge from the company.
- d. Only when it obtains recovery orders from National Company Law Tribunal (NCLT), the bank can recover the fees paid by it for registration of charge from the company.

## 6. Section 79 (a) & (b)

### ACQUISITION OF PROPERTY SUBJECT TO CHARGE AND MODIFICATION OF CHARGE

**TWO Cases covered in this section where Section 77 shall apply -**

**When a company -**

- A. Acquiring a property which is already subject to charge.**
- B. Any modification in terms & conditions of a charge registered.**

A	<p>Company acquiring any Property subject to Charge</p> <p>[Section 79 (a)]</p>	<ul style="list-style-type: none"> <li>• In case of a property where charge is already registered and</li> <li>• if it is sold with the permission of the holder of charge,</li> <li>• it shall be the duty of the company acquiring it</li> <li>• to get the charge registered in accordance with Section 77.</li> <li>• In other words, the earlier charge should get vacated and, in its place, new charge should get registered by the company which has now acquired the property.</li> </ul>
B	<p>Modification of Charge when there is Change in Terms and Conditions, etc.</p> <p>[Section 79 (b)]</p>	<ul style="list-style-type: none"> <li>• Any modification in charge (i.e. change in terms and conditions or change in extent or operation of any charge, etc.)</li> <li>• to be registered by the company in CHG-1 &amp; CHG-9 under section 77 (Time limits are also same)</li> </ul> <p><b>'Modification' includes -</b></p> <ul style="list-style-type: none"> <li>• variation in any of the terms and conditions of the agreement including change in rate of interest which may be by mutual agreement or by operation of law.</li> <li>• Variation in extent or operation of any charge is also a kind of modification.</li> <li>• Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.</li> </ul>
<p><b>Some of the cases of modification –</b></p> <ul style="list-style-type: none"> <li>❖ Variation in T/C of the existing charge by an agreement</li> <li>❖ In pursuance of an agreement for increasing/decreasing the limits</li> <li>❖ Modification as a result- pari passu charge</li> <li>❖ Change in rate of Interest rate (other than bank rate)</li> <li>❖ Change in repayment schedule (not applicable in case of working loans which are repayable on demand)</li> <li>❖ Partial release of charge on a particular asset/ property</li> </ul>		
	<p>Issue of Certificate of Modification</p> <p>Rule 6</p>	<ul style="list-style-type: none"> <li>• Where the particulars of modification of charge is registered under section 79</li> <li>• the Registrar shall issue a certificate of modification of charge in -</li> </ul> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><b>CHG 3</b> <b>Certification of Modification</b></p> </div> <ul style="list-style-type: none"> <li>• The certificate so issued by the Registrar shall be conclusive evidence that the requirements of Chapter VI of the Act and the Rules made thereunder as to registration of modification of charge have been complied with.</li> </ul>

## 7. Section 81 & 85 REGISTER OF CHARGES

Maintenance Requirement	<b>Every company</b> must maintain a <b>Register of Charges</b> at its registered office.
Contents of Register <b>CHG 7</b>	<ul style="list-style-type: none"> <li>● <b>All charges &amp; floating charges</b> affecting <b>property, assets, or undertakings</b> of the company.</li> <li>● All properties acquired are subject to a charge</li> <li>● Modification and satisfaction of charge in prescribed form and manner</li> </ul>
Copy of Instrument	● <b>A copy of the charge instrument</b> must also be kept at the registered office <b>with the Register.</b>
Timing of Entries	● <b>Entries to be made forthwith</b> after <b>creation, modification, or satisfaction</b> of charge.
Authentication of Entries	● <b>By a Director, Company Secretary, or an authorized person.</b>
Inspection Rights	<ul style="list-style-type: none"> <li>● <b>Free for members or creditors</b> in business hours</li> <li>● <b>Fee applicable</b> for any <b>other persons</b> (subject to reasonable restrictions by Articles).</li> </ul>
Preservation Requirement	<ul style="list-style-type: none"> <li>● <b>Register</b> → <b>Permanently.</b></li> <li>● <b>Instrument</b> → <b>8 years</b> from date of <b>satisfaction</b> of charge.</li> </ul>

### Section 81 – Register of Charges to be kept by the Registrar

Maintenance of Register	<ul style="list-style-type: none"> <li>● <b>Registrar of Companies (ROC)</b> shall maintain</li> <li>● a <b>Register of Charges</b> for <b>every company</b> in <b>prescribed form &amp; manner.</b></li> </ul>
Online Availability Rule 7 (1)	The <b>MCA Portal (<a href="http://www.mca.gov.in/MCA21">www.mca.gov.in/MCA21</a>)</b> deemed to be the <b>Register of Charges</b> as per
Inspection Rights Section 81(2) & Rule 7(2)	Open <b>to inspection</b> by <b>any person</b> on <b>payment of prescribed fee</b>
<b><i>NOTE: Pari passu charge-holder is entitled to proportionate share in the property. If ceded, becomes second charge-holder and is entitled after first charge-holder is fully satisfied.</i></b>	

1. The Registrar shall keep a register of charges which shall be open to inspection by on payment of fee:

**(1 Mark) (MTP Oct. 23)**

- a. the company
  - b. the charge holder
  - c. holder
  - d. any person
2. Purvi Pvt. Ltd. is maintaining a register of charges along with all other necessary books and registers. The entry for every creation, modification and satisfaction of charges is being done properly. The company is also preserving every instrument related to such charges. From the following for how long the instrument of charges shall be maintained/preserved by the company\_\_\_\_\_.

**(MTP MAY 2019)**

- a. for minimum 8 years from the date of creation of charge
  - b. For minimum 10 years from the date of creation of charge
  - c. For minimum 8 years from the date of satisfaction of charge
  - d. permanently, without any time limit
3. Who cannot inspect the register of charges and instrument of charges, during business hours, without paying any fees:
- (RTP Mar 23)**
- a. Any member of the company
  - b. The Creditor of the company
  - c. Persons other than member and creditor of the company
  - d. No person is allowed to inspect the register of charges

## 8. Section 82 WITH RULE 8 COMPANY TO REPORT

### SATISFACTION OF CHARGE

Duty to Intimate <b>CHG 4</b>	<ul style="list-style-type: none"> <li>● <b>Company</b> to inform ROC about full payment/satisfaction of charge</li> <li>● <b>Time Limit - 30 days</b> from date of payment/satisfaction.</li> </ul>
Extended Time (Proviso to Section 82)	<ul style="list-style-type: none"> <li>● <b>Up to 300 days</b> (with additional fees &amp; application by company or charge-holder).</li> </ul>
<p><i>Note - In case of a specified IFSC public company and Private company the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed (vide Notification No. GSR 8 (E), dated 04-01-2017).</i></p>	
Notice by ROC to Charge-holder	<ul style="list-style-type: none"> <li>● ROC will send notice to charge-holder to confirm or oppose satisfaction with a show cause notice</li> </ul>
Time to Respond by Charge-holder	<ul style="list-style-type: none"> <li>● <b>Maximum 14 days.</b></li> </ul>
If No Objection is raised by CH	<ul style="list-style-type: none"> <li>● If charge-holder does not reply within 14 days then ROC can enter Memorandum of Satisfaction &amp; inform the company.</li> </ul>
If Objection Raised is raised by CH	<ul style="list-style-type: none"> <li>● ROC records a note of objection in Register &amp; informs the company.</li> </ul>
No Notice Required When	<ul style="list-style-type: none"> <li>● <b>If intimation is in prescribed form &amp; signed by charge-holder.</b></li> </ul>
<p>ROC on recording of such satisfaction of charge in FULL – <b>Issue Certificate of Satisfaction</b> under <b>CHG 5</b></p>	
Preservation of Records	<ul style="list-style-type: none"> <li>● Instrument <b>creating/modifying charge to be preserved for 8 years from date of satisfaction.</b></li> </ul>
<p><i>Note - Satisfaction happens when the amount is not repaid but an asset of equal value is offered in the place of the property being released from charge.</i></p>	

1. On receipt of intimation of satisfaction of charge, the registrar issues a notice to the holder calling a show cause within such time not exceeding \_\_\_ days as to why payment or satisfaction in full should not be regarded as intimated to the Registrar:

(1 Mark) (MTP NOV 2019)

- a. 14
- b. 21
- c. 30
- d. 300

## 9. Section 83 POWER OF REGISTRAR TO MAKE ENTRIES OF SATISFACTION AND RELEASE IN ABSENCE OF INTIMATION FROM COMPANY

Empowered Authority - Registrar (ROC)	
When Applicable ?	<ul style="list-style-type: none"> <li>Property subject to charge is sold/released</li> <li>No intimation received from company/charge-holder.</li> </ul>
Registrar's Power	<ul style="list-style-type: none"> <li>Can enter memorandum of satisfaction in the Register of Charges on being satisfied.</li> </ul>
What can be recorded ?	<ul style="list-style-type: none"> <li>Full satisfaction of debt</li> <li>Partial satisfaction</li> <li>Release of the charged property</li> <li>Charged property cease to be property of the company</li> </ul>
Independent Power (SUO MOTO)	<ul style="list-style-type: none"> <li>ROC can act even without intimation from the company or charge-holder.</li> </ul>
Intimation to Parties	<ul style="list-style-type: none"> <li>Registrar must inform affected parties within 30 days of making the entry.</li> </ul>
<p>ROC on recording of such satisfaction of charge in FULL –  <b>Issue Certificate of Satisfaction</b>            under  <b>CHG 5</b></p>	

## 10. Section 84 INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER

### When is notice required?

- If a person gets an order from a court to appoint a receiver or manager of property subject to a charge, or
- If a person appoints such receiver/manager under powers given in a charge document,
- They (receiver or manager) must give notice of this appointment to both:
  - The Company, and
  - The Registrar of Companies (ROC)
- Time Limit: Within 30 days of the appointment or order.

CHG 6

### What will the Registrar do?

- Register the details of the receiver/manager in the Register of Charges (after payment of fees).

### When the receiver/manager's appointment ends: Section 84(3) -

- The person must give notice of this to both the company and the ROC.
- ROC will update the Register accordingly.

## 11. Section 86 PUNISHMENT FOR CONTRAVENTION

### Punishment for Contravention

#### 1. Contravenes any provision of this chapter (77 to 85) then -

- Company – Fine 5 Lacs
- Every Officer – 50,000

#### 2. If any person wilfully provides -

- False information or
- knowingly suppresses any material information →>
- Liable under section 447 (Punishment for fraud)

## 12. Section 87 with Rule 12 RECTIFICATION ORDER IN REGISTER OF CHARGES BY CG

Authority	Central Government
<b>When Rectification Allowed</b>	<ul style="list-style-type: none"> <li>● <b>Omission</b> in giving intimation to Registrar about <b>payment or satisfaction</b> of charge within the specified time.</li> <li>● <b>Omission or misstatement</b> of particulars in any filing related to - <ul style="list-style-type: none"> <li>○ Creation/modification of charge</li> <li>○ Memorandum of satisfaction</li> <li>○ Other entries under <b>Section 82 or 83</b>.</li> </ul> </li> </ul>
<b>Conditions for Rectification</b>	<ul style="list-style-type: none"> <li>● Default was <b>accidental</b>,</li> <li>● <b>Due to inadvertent</b> (unintentional) or</li> <li>● Due to some other <b>sufficient cause</b></li> <li>● Its is not <b>prejudicial</b> to creditors or shareholders.</li> </ul>
<b>Who Can Apply</b> <b>CHG 8</b>	<ul style="list-style-type: none"> <li>● <b>Company or any interested person in respective application form</b></li> </ul>
<b>Power by CG - Rule 12</b>	<p><b>A.</b> Order rectification of the omission and misstatement in the filings and statement as per section 82 &amp; 83</p> <p><b>B.</b> Extension of time for satisfaction of charge beyond 300 days from the date of payment or satisfaction.</p>
<p><b>Note: Vide Notification No. S.O. 4090 (E), dated 19-12-2016, powers of the Central Government with respect to Section 87 stand delegated to the Regional Directors.</b></p>	

1. Which of the following definition of 'Charge' is correct as per Section 2(16) of the Companies Act, 2013?
  - a. 'Charge' means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and but does not includes a mortgage.
  - b. 'Charge' means mortgage or lien created on the property or assets of a company or any of its undertakings or both as security and but does not includes interest.
  - c. 'Charge' means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.
  - d. None of the above.
2. A charge made to cover definite and ascertained assets of permanent nature is called as:
  - a. Floating charge
  - b. Specific charge
  - c. Registered charge
  - d. Modified charge

3. Which of the following statement is/are correct?
  - a. In case of fixed charge, the company retains possession of the assets charged and it can sell/ dispose the asset charged without the consent of the charge holder.
  - b. In case of floating charge, the company retains possession of the assets charged but it cannot sell/dispose the asset charged without the consent of the charge holder.
  - c. A fixed charge becomes floating when the money borrowed against the asset is repaid in full.
  - d. None of the above.
4. A floating charge becomes fixed when:
  - a. The borrowing company goes in liquidation
  - b. The borrowing company ceases to be in business
  - c. Both (a) and (b)
  - d. None of the above.
5. Which of the following statement is/are not correct with respect of Registration of charges under Companies Act, 2013?
  - a. It shall be the duty of every company creating a charge only if it is within India.
  - b. It shall be the duty of every company creating a charge on its assets irrespective of whether they are tangible or intangible.
  - c. It shall be the duty of every company creating a charge on its assets whether in India or outside India.
  - d. All of the above.
6. A company took loan from bank against security of its book debts. Particulars of the charge would be filed with Registrar of companies in:
  - a. Form No.CHG-1
  - b. Form No.CHG-9
  - c. Form No.CHG-5
  - d. Form No.CHG-10
7. Particulars of the charge to be filed with the Registrar of Companies should be in prescribed form and duly signed by authorised signatory of:
  - a. the Company
  - b. the Charge holder
  - c. Both (a) and (b)
  - d. None of the above
8. A company creating a charge is required to register the charge with the Registrar by paying normal fee within:
  - a. 30 days of intimation by the lender
  - b. 30 days of execution of instrument creating charge
  - c. 30 days from the Board Meeting where. the lending is approved
  - d. 30 days from the date of Annual General Meeting
9. Rana Machines Ltd. took a term loan of 150 Lakh from PBN Bank Ltd. by mortgaging its factory land. The mortgage was registered with Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI). The Director of Rana Machines Ltd. is of the opinion that there is no further registration required with Registrar of Companies. What is your advice to the company?

- a. When the mortgage is registered with Central Registry, no registration is required with Registrar of Companies.
  - b. Registration of charge with Registrar of Companies is required irrespective of the fact that mortgage is registered with the Central Registry.
  - c. Registration of charge with Registrar of Companies is required only if the value of Bank loan exceeds 100 Lakh.
  - d. Registration of charge with Registrar of Companies is required only if directed so by Central Government.
10. X Ltd. took a loan on its Plant & Machinery and created a charge in favour of the Bank. The Plant & Machinery was sold to Y Ltd. in a slump sale whereby all the assets and liabilities get transferred to Y Ltd. Which of the following statement is/are correct with respect to Registration of charges?
- a. X Ltd. is required to file intimation of sale of Plant & Machinery.
  - b. Y Ltd. is required to file Registration of charge in respect of Plant & Machinery
  - c. X Ltd. is required to file Modification of charge in respect of Plant & Machinery
  - d. All of the above
11. ABC Ltd. took a term loan from XYZ Finance Company for 10 Lakh @ 15% interest per annum against security of stock in trade of the company. The charge was duly registered by ABC Ltd. in due course. Due to ease of credit in economy, XYZ Finance company decided to lower the interest rate to 12% per annum. It is the duty of ABC Ltd. to:
- a. File for fresh Registration of charge
  - b. File for Modification of charge
  - c. File for Intimation of payment of interest
  - d. File for Rectification of charge
12. Reliant Hydra Limited was sanctioned a term loan of ns Lakh by Yesterday Bank Limited on 13th January, 2020 on mortgage of title deeds of its Corporate Office Building situated in Gurgaon (Haryana) and an instrument of charge was executed. Reliant company omitted to get the charge registered with the Registrar of companies. This fact came to light during the annual audit of the company in April, 2020 when the Chief Manager of Yesterday Bank issued a warning to recall the loan unless the company takes steps for registration of charge. In addition to the normal fee and additional fee for filing of Registration of Charge, the company would be required to pay:
- a. Special Registration Fee
  - b. Ad valorem Fee
  - c. Late Registration Fee
  - d. Ad valorem Cess
13. A charge was created by PQR Ltd. on its office premises to secure a term loan of no Lakh availed from IndusInd Bank Ltd. through an instrument of charge executed by both the parties on 8th January, 2020. Soon after the Company Secretary of PQR Ltd. died and the charge could not be registered. Advise the company regarding the latest date within which it must register the charge with the Registrar to avoid ad valorem fee.
- a. 7th February, 2020
  - b. 31st January, 2020
  - c. 8th March, 2020
  - d. 7th May, 2020

14. Where the charge is not registered by the borrower company, it can be filed for registration by the charge holder within:
- 30 days of creation of charge
  - 60 days of creation of charge
  - 90 days of creation of charge
  - Time originally allowed to company creating the charge
15. Where registration is effected on the application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of:
- Normal fee paid by him to the Registrar
  - Normal fee plus any additional fees paid by him to the Registrar
  - Normal fee paid by him to the Registrar plus incidental charges
  - Normal fee plus any additional fees paid by him to the Registrar plus incidental charges
16. A charge was created on assets of Prakash Limited. Such charge is registered on 12th January, 2020. As per the provisions of Companies Act, 2013, any person acquiring such assets shall be deemed to have notice of the charge from:
- 12th January, 2020
  - 13th January, 2020
  - 12th February, 2020
  - 12th March, 2020
17. The maximum time allowed by the Registrar to the company for filing intimation of satisfaction of charge is:
- 30 days from the date of creation of charge
  - 30 days from the date of satisfaction of charge
  - 300 days from the date of satisfaction of charge
  - 330 days from the date of satisfaction of charge
18. On receipt of intimation of satisfaction of charge, the Registrar of Companies issues a notice to the charge holder calling upon him to show cause as to why payment or satisfaction in full should not be recorded as intimated to the Registrar. The time allowed to charge holder in this show cause notice is:
- Maximum 7 days
  - Minimum 14 days
  - Maximum 14 days
  - Maximum 21 days
19. The entries in the Register of Charges maintained by a company shall be authenticated by:
- A Director of the company
  - Company Secretary of the company
  - Any person authorised by the Board for the purpose
  - Any one of above
20. The register of charges and the instrument of charges maintained by the company shall be open for inspection during:
- Working hours of the company
  - Business hours of the company
  - At all times
  - 9AM to 5PM
21. Which of the following statement is/are correct with respect to provisions of Companies Act, 2013?
- The Register of Charges shall be open for inspection by any member or creditor on payment of such fees as may be prescribed.

- b. The Register of Charges shall be open for inspection by any other person (other than member or creditor) without any payment of fees.
  - c. Both (a) and (b)
  - d. None of the above
22. The Register of Charges maintained by the company is required to be preserved:
- a. For a period of 8 years
  - b. Permanently
  - c. For a period of 10 years
  - d. For a period of 6 years
23. The instrument creating a charge or modification thereof is required to be preserved by the company:
- a. For a period of 8 years from the date of creation of charge by company
  - b. For a period of 8 years from the date of modification of charge by company
  - c. For a period of 8 years from the date of satisfaction of charge by company
  - d. Permanently
24. Which of the following statement is not correct with respect to provisions of Section 77 of Companies Act, 2013:
- a. Any charge which is not registered shall be void as against the liquidator.
  - b. Any charge which is not registered shall be void as against any other creditor of the company.
  - c. Any charge which is not registered shall be void as against the company.
  - d. None of the above.
25. The company shall be liable to punishment for contravening any provision of Chapter VI of the Companies Act, 2013 shall be:
- a. A fine which shall not be less than 1 Lakh but which may extend to 10 Lakh.
  - b. A fine which shall not be less than 25,000 but which may extend to 1 Lakh.
  - c. Imprisonment for a term which may extend to 6 months.
  - d. All of above

## SUMMARY OF ALL CHG FORMS

### All CHG Forms covered under Registration of Charge

- ❖ CHG 1 – Other than DH
- ❖ CHG 9 – Registration of charge for Debenture holder
- ❖ **CHG 2 – Certificate of Registration of Charge**
- ❖ **CHG 3 – Certificate of Modification of Charge**
- ❖ CHG 4 – On **satisfaction** of charge – Co to intimate ROC in 30 days
- ❖ **CHG 5 – Certificate on satisfaction of charge**
- ❖ CHG 6 – Appointment of R/M to ROC in 30 days
- ❖ CHG 7 – Register to be maintained by Company
- ❖ CHG 8 – Apply to CG for **Extension**
- ❖ CHG 10 – Reasons for **Extension** to CG

## What is Charge and It's Definition

### Related Provisions

- ❖ Section 2 (16)
- ❖ Sections 77 to 87
- ❖ Company (Registration of Charge Rules 2014)

### What is Charge?

#### Section 2(16)

- Means an interest or lien created
- on the property or assets of a company
- Or any of its undertaking or both
- as a security and
- includes a mortgage
- Within India or outside

#### Inclusive definition

#### Charge Includes -

- Mortgage
- Pledge
- Hypothecation

#### For differences -

- IMM or M
- T or INT
- In-O/S India

## Problem Kya Hai? - Question Bank

### ICAI Module Descriptive Questions

#### Section 2(16) Definition of Charge

1. What is 'Floating Charge'? When does it get crystallised?

**Solution:**

A 'Floating Charge' is a type of charge that is created on assets or a class of assets which are of fluctuating or changing in nature. The assets which are under floating charge may include raw material, stock-in-trade, debtors, etc. It is a charge created upon a class of assets both present and future.

- (a) The assets under floating charge keep on changing because the borrowing company is permitted to use them in the ordinary course of business.
- (b) The buyers of the assets covered under the floating charge will get them free of charge.

**Crystallization of a Floating Charge**

In the following events, a floating charge will get crystallised or fixed:

- (i) When the creditor enforces the security due to the breach of terms and conditions of a floating charge like there is non-payment of interest or default in repayment of instalments as per the terms of agreement.
- (ii) When the company ceases to continue its business.
- (iii) When the borrowing company goes into liquidation.

A floating charge remains dormant until it becomes fixed or crystallised. On crystallisation of charge, the security (i.e. raw material, stock-in-trade, etc.) becomes fixed and is available for realization so that borrowed money is repaid.

#### Section 2(16)

2. Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.

**Solution:**

The term charge has been defined in section 2 (16) of the Companies Act, 2013 as 'an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage'.

**Punishment for contravention** – According to section 86 of the Companies Act, 2013, if any company is in default in complying with any of the provisions of Chapter VI, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Further, if any person willfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under section 77, he shall be liable for action under section 447 (punishment for fraud).

**Section 77 Registration of Charge**

3. How will a copy of an instrument evidencing the creation of charge and required to be filed with the Registrar be verified?

**Solution:**

A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:

- (a) in case property is situated outside India: where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, if any, of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;
- (b) in case property is situated in India (whether wholly or partly): where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

**Section 77**

4. Renuka Soaps and Detergents Limited realised on 2nd May, 2024 that particulars of charge created on 10th March, 2024 in favour of a Sankalp Commercial Bank Limited were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th June, 2024 instead of 2nd May, 2024? Explain with reference to the relevant provisions of the Companies Act, 2013.

**Solution:**

The charge in the present case was created after 02-11-2018. The relevant provisions of the Companies Act, 2013 applicable in the present case are as explained below:

Initially, the prescribed particulars of the charge together with the instrument of charge, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar within 30 days of its creation. [Section 77 (1)]. In this case particulars of charge were not filed within the prescribed period of 30 days.

However, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to extend the original period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the jurisdictional Registrar of Companies after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June, 2024 instead of 2nd May, 2024, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay ad valorem fees. Since the first sixty days from creation of charge have expired on 9th May, 2024, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 9th May, 2024 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

### **Section 80 Deemed Notice of Charge**

5. Mr. Antriksh purchased a commercial property in Delhi belonging to NRT Limited after entering into an agreement with the company. At the time of registration, Mr. Antriksh came to know that the title deed of the company was not free and the company expressed its inability to get the title deed transferred in Antriksh's name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of NRT Limited is correct?

#### **Solution:**

According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. Thus, Section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Antriksh, therefore, ought to have been careful while purchasing property and should have verified beforehand that NRT Limited had already created a charge on the property.

In view of above, the contention of NRT Limited is correct.

### **Section 83 Power of Roc to Register Satisfaction**

6. Ranjit acquired a property from PQR Limited which was mortgaged to Pyramid Bank. He settled the dues to Pyramid Bank in full and the same was registered with the sub-registrar who noted that the mortgage had been settled. But neither the company nor Pyramid Bank filed particulars of satisfaction of charge with the jurisdictional Registrar of Companies. Can Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.

**Solution:**

Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charge even if no intimation has been received by him from the company. Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- (a) the debt has been satisfied in whole or in part; or
- (b) the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the Register of Charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

**Section 85 Inspection of Charges**

7. 'A company is required to keep a Register of Charges at its Registered Office'. Considering this statement, mention the provisions of the Companies Act, 2013 in respect of keeping of Register of Charges by the companies.

**Solution:**

In respect of keeping of Register of Charges by a company, Section 85 of the Companies Act, 2013 and Rules 10 as well as 11 of the Companies (Registration of Charges) Rules, 2014 are relevant.

- (i) According to section 85 (1):
  - (a) Every company shall keep a Register of Charges in the prescribed form and manner at its registered office.
 

**Note:** Rule 10 (1) specifies Form CHG-7 in which the Register of Charges shall be maintained.
  - (b) The Register shall include all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case the prescribed particulars.
- (ii) According to Proviso to section 85 (1):
 

A copy of the instrument creating the charge shall also be kept at the registered office along with the Register of Charges.

**(iii)** Provisions of Rule 10 are as under:

- (a)** Entry of Particulars of all Charges: According to Rule 10 (1), the company shall enter in the Register particulars of all the charges registered with the Registrar on any of its property, assets or undertakings and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.
- (b)** When to make Entries: According to Rule 10 (2), the entries in the Register shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.
- (c)** Who can authenticate Entries: According to Rule 10 (3), the entries in the Register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.

Inspection of Register of Charges and Instrument of Charges: As regards inspection, section 85 (2) states that the register of charges and the instrument of charges shall be open for inspection during business hours:

- (a) by any member or creditor without any payment of fees; or
- (b) by any other person on payment of prescribed fees.

Similarly, regarding inspection, Rule 11 states that the Register of Charges and the instrument of charges kept by the company shall be open for inspection-

- (a) by any member or creditor of the company without fees;
- (b) by any other person on payment of fee.

Preservation of Register: According to Rule 10 (4) the Register of Charges shall be preserved permanently. However, the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge.

### **Section 87 Condonation for Delay**

8. ABC Limited created a charge in favour of OK Bank which was duly registered. Later on, the Bank enhanced the facility by another ₹ 20 crore. Due to inadvertence, the modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.

#### **Solution:**

ABC Limited is advised to immediately file an application for rectification of the Register of Charges in Form No. CHG-8 with the Central Government in accordance with Section 87 of the Companies Act, 2013.

Section 87 and Rule 12 empower the Central Government to order rectification of Register of Charges in the following cases of default:

- (i) when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;
- (ii) when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release).

Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it was not of a nature to prejudice the position of creditors or shareholders of the company.

The application in Form CHG-8 shall be filed by the company or any interested person. Therefore, OK Bank can also proceed under Section 87 as aforesaid.

The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

### RTP, MTP and PYQ Descriptive Questions

#### Section 2(16) Definition of Charge

1. Explain the term 'charge'. State the circumstances under which necessity to create a charge arises. What is the time limit for registration of charge with the registrar?

**(MAY 2018)**

**Solution:**

**Charge:** According to section 2(16) of the Companies Act, 2013 “charge” has been defined as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

**Why creating a charge is a necessity for companies?**

When the company raises money through borrowings, they may issue debentures or by obtaining loans from banks/ financial institutions. These banks/ financial institutions need a surety regarding the repayment of their funds. Thus, they create a mortgage or hypothecation on the assets of the company for safe and secured lending of the funds. This creation of right on the assets and properties of the borrower companies, is known as a charge on assets.

Once charge is registered and filed, it becomes an information in public domain as to how much company has borrowed against its assets and from whom.

**Time limit for registration of charge with the registrar:**

- (i) It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in form CHG-1 or in case of debentures – CHG-9, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.
- (ii) In cases registration of charge was not effected within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation. In other words, a grace period of another 30 days is granted after the expiry of the original 30 days, on payment of additional fees as prescribed. If the charge is not registered within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees

#### Section 2(16)

2. Adhar Ltd. and Mittal Ltd. both took loans from different banks and provided security against them. Adhar Ltd. mortgaged its factory building and machinery, while Mittal Ltd. pledged its stock-in-trade, raw materials, and accounts receivable. Specify the type of charges created in both cases. Justify your answer in light with the relevant provisions under the Companies Act, 2013. Also, analyze what would happen if both companies fail to repay their loans.

**(MTP May 25)**

**Solution:**

**Law:** A charge may be either fixed or floating.

**Fixed Charge**

A 'Fixed Charge' is a charge on specific assets of the borrowing company. These assets are of permanent nature like land and building, machinery, office premises, etc. Further, these assets are identified at the time of creation of charge. A fixed charge is usually created by way of mortgage or by deposit of title deeds. When a charge is created on such assets, the charge remains 'fixed' and the borrowing company is not permitted to sell such assets during the period of charge though it may use them. Assets under fixed charge can be sold only with the permission or consent of the charge-holder.

**Floating Charge**

A 'Floating Charge' is created on assets or a class of assets which are of fluctuating or changing in nature- like raw material, stock-in-trade, debtors, etc. It is a charge upon assets both present and future. The assets under floating charge keep on changing because the borrowing company is permitted to use them for trading or producing final goods for sale.

**Conclusion:** In the given scenario, following nature of charges are created w.r.t the following companies:

**(i) Fixed Charge (Adhar Ltd.):**

The company mortgaged its factory building and machinery, which are permanent, identifiable assets. Since these assets do not change frequently, the bank created a fixed charge over them. The company cannot sell these assets without the bank's approval during the loan tenure. In case the company fails to repay the loan, the bank can take possession of the factory and machinery to recover its dues.

**(ii) Floating Charge (Mittal Ltd.):**

The company pledged stock-in-trade, raw materials, and accounts receivable, which are changing in nature. The bank created a floating charge, allowing Mittal Ltd. to use, sell, and replenish these assets in the normal course of business. In case if the company repays the loan, the floating charge automatically ceases.

However, if the company fails to repay, the floating charge crystallizes, meaning:

(d) The bank converts the floating charge into a fixed charge.

(e) Mittal Ltd. loses control over its assets.

(f) The bank can seize and sell the assets to recover its loan amount.

Hence in the above case, Adhar Ltd., loan is secured by a fixed charge, limiting its ability to dispose of the secured assets where as in the case of Mittal Ltd., loan is secured by a floating charge, allowing normal business operations unless a default occurs. If both companies default, the bank can take control of the respective assets and sell them to recover the loans.

**Section 2(16)**

3. Explain the meaning of Crystallization of a Floating Charge.

(MTP Sept 24)

**Solution :**

Crystallization of a Floating Charge

Conversion of fixed Charge into floating charge is called crystallization of a floating charge. A floating charge remains dormant until it becomes fixed or crystallizes.

A floating charge crystallizes or gets fixed when:

- (i) the terms and conditions of floating charge are violated
- (ii) The company goes into liquidation or
- (iii) The company ceases to carry on business or
- (iv) A receiver is appointed or
- (v) A default is made in paying the principal and/ or interest and the holder of the charge brings an action to enforce his security.

**Section 2(16)**

4. Rose (Private) Limited on 3rd April 2019 obtained ₹ 30 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ₹ 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Rose (Private) Limited, from a financial institution.

- (i) Is it required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?
- (ii) State the provisions relating to extension of time and procedure for registration of charges in case the above charge was not registered within 30 days of its creation.

(MTP May 25)(4 Marks) (Nov 2020)

**Solution :**

**Conclusion:** As per the provisions of Section 2(16) of the Companies Act, 2013, “charge” means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

- (i) Whenever a company obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, Rose (Private) Limited is required to create a charge on such property or assets in favour of the lender. Hence, for ₹ 30 Lakhs working capital loan, it is required to create a charge on it.  
Rose (Private) Limited is not required to create a charge for ₹ 5 Lakh adhoc overdraft on the personal guarantee of a director. Since charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.
- (ii) As per the provisions of Section 77 of the Companies Act, 2013, in case the above charge was not registered within 30 days of creation of the charge, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed. If the charge is not registered within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees.

- (iii) Procedure for Extension of Time Limit: For seeking extension of time, the company is required to make an application to the Registrar in the prescribed form. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company. The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of thirty days. Only then he will allow registration of charge within the extended period. Further, requisite additional fee or ad valorem fee, as applicable, must also be paid.

### Section 77 Registration of Charge

5. Krish Limited created a charge on its assets on 2nd February, 2021. However, the company did not register the charge with the Registrar of companies till 15th March, 2021.
- (i) What procedure should the company follow to get the charge registered?
- (ii) Suppose the company realises its mistake of not registering the charge on 27th May, 2021 (instead of 15th March, 2021), can it still register the charge?  
Advise with reference to the relevant provisions of the Companies Act, 2013.

(RTP May 2022)

#### Solution:

**Law:** As per sec 77 of companies act, 2013

- (i) It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in form CHG-1 or in case of debentures – CHG-9, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.
- (ii) In cases registration of charge was not effected within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation. In other words, a grace period of another 30 days is granted after the expiry of the original 30 days, on payment of additional fees as prescribed.
- (iii) If the charge is not registered within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of sixty days after payment of prescribed ad valorem fees

#### Conclusion:

- (i) Krish Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.
- (ii) Clause (b) of second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay ad valorem fees.

If the company realises its mistake of not registering the charge on 27th May, 2021 instead of 15th March, 2021, it shall be noted that a period of sixty days has already expired from the date of creation of charge.

Since the first sixty days from creation of charge have expired on 3rd April, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3rd April, 2021 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

### Section 77

6. PQR Limited, a manufacturing company, is in the process of expanding its operations. To support this expansion, PQR Limited has acquired a plot of land along with the buildings on it from ABC Limited, another company in the same industry. The property, however, is subject to an existing charge, created in favor of a bank as security for a loan taken by ABC Limited. This charge had been registered by ABC Limited at that time. The directors of PQR Limited are of the opinion that as the charge for the property was already created, there is no further obligation to be fulfilled from the side of PQR Limited.

After negotiations, the bank, as the charge holder, consents to the sale and transfer of the property to PQR Limited with the condition that PQR Limited must register a new charge over the acquired property as security for its own loan obligations.

Advise whether the contention of directors of PQR Limited is correct. Give your answer in terms of the provisions of the Companies Act, 2013.

(RTP Jan 25)

#### Solution:

**Law:** The provisions of section 77 relating to registration of charges shall, so far as may be, apply to:

- (i) a company acquiring any property subject to a charge within the meaning of that section; or
- (ii) any modification in the terms or conditions or the extent or operation of any charge registered under that section.

According to section 79(a) of the Companies Act, 2013, in case of a property where charge is already registered and if it is sold with the permission of the holder of charge, it shall be the duty of the company acquiring it to get the charge registered in accordance with section 77.

**Conclusion:** According to the provisions of section 77, when a company acquires property that is subject to an existing charge, it is the duty of the acquiring company (PQR Limited in this case) to register the charge as its own. This means that PQR Limited must create a fresh charge over the acquired property and register it with the Registrar of Companies (RoC) as per section 77.

Now upon acquisition, it is PQR Limited's responsibility to ensure that the previous charge is effectively discharged and that the new charge is registered in its name, reflecting PQR Limited as the current owner and debtor of the charge. Hence, the contention of directors of PQR Limited that since the charge for the property was already created, there is no further obligation on part of PQR Limited, is not correct.

**Section 80 Deemed Notice of Charge**

7. Mr. Prakash purchased a commercial property in Mumbai belonging to PQR Limited after entering into an agreement with the company. At the time of registration, Mr. Prakash came to know that the title deed of the company was not free and the company expressed its inability to get the title deed transferred in Prakash's name contending that he ought to have the knowledge of charge created on the property of the company. In line with the provisions of the Companies Act, 2013, advise whether the contention of PQR Limited is correct?

(MTP Jan 25) (RTP MAY 2018) (4 Marks) (MPT M 21)

**Solution:**

**Law:** According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

**Conclusion:** Thus, section 80 clarifies that if any person acquires a property, assets or undertaking in respect of which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date of its registration. Mr. Prakash, therefore, ought to have been careful while purchasing property and should have verified beforehand that PQR Limited had already created a charge on the property.

In view of above, the contention of PQR Limited is correct.

**Section 82 Satisfaction of Charge**

8. DN Limited hypothecated its plant to a Nationalised Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full, The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges.

(NOV 2019)

**Solution:****Intimation Regarding Satisfaction of Charge**

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in Form CHG-4 within 30 days from the date of payment or satisfaction.

**Extended Period of Intimation:**

On application by the company or the charge holder, the Registrar may, allow such intimation of payment or satisfaction to be made within 300 day from the date of payment or satisfaction along with additional fees.

**Notice to the Chargeholder**

On receipt of intimation, the Registrar shall send a notice to the charge holder calling him to show cause within time specified in the notice but not exceeding 14 days. The charge holder shall show cause as to why payment or satisfaction in full should not be recorded.

However, no notice is required to be sent, where the intimation to the Registrar in Form CHG-4 is signed by the chargeholder.

Where the Registrar enters a memorandum of satisfaction of charge in full; he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5

**Section 83 Power of Roc to Register Satisfaction**

9. Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.

(MTP NOV 2020) (MTP Jan 25)

**Solution :**

**Law:** Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

- (i) Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that
  - (a) the debt has been satisfied in whole or in part; or
  - (b) the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.
 then he may enter in the register of charges a memorandum of satisfaction This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.
- (ii) **Information to affected parties:** The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.
- (iii) **Issue of Certificate:** As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

**Conclusion:** Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

**Section 83**

10. What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.

(RTP NOV 2020) (MTP MAY 2019) (MTP Sept 24)

**Solution:**

Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- (a) the debt has been satisfied in whole or in part; or
- (b) the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

### Section 85 Inspection of Charges

11. Explain the provisions of the Companies Act, 2013, in respect of 'Inspection of Register of Charges and Instrument of Charges'.

#### Solution:

#### Inspection of Register of Charges and Instrument of Charges

As regards inspection, section 85 (2) of the Companies Act, 2013, states that the register of charges and the instrument of charges shall be open for inspection during business hours:

- (i) by any member or creditor without any payment of fees; or
- (ii) by any other person on payment of prescribed fees. subject to such reasonable restrictions as the company may, by its articles, impose.

### Section 85

12. What is the time limit for registration of charge with the registrar? Where should the company's Register of charges be kept? State the persons who have the right to inspect the Company's Register of charges.

(NOV 2018)

#### Solution:

**Time limit for registration of charge with the registrar:** According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, to register the particulars of the charge, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.

The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of 30 days of the date of creation of the charge, allow the registration of the same after 30 days but within a period of 300 days of the date of such creation of charge or modification of charge on payment of such additional fees as may prescribed.

The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company [The companies (Registration of charges) Rules, 2014].

Provided that if registration is not made within a period of 300 days of such creation, the company shall seek extension of time from the Central Government in accordance with the provisions of Section 87.

**Place of keeping company's register of charges:** According to section 85 of the Companies Act, 2013, every company shall keep at its registered office a register of charges.

**Inspection of the register of charges and instrument of charges:** The register of charges and instrument of charges, shall be open for inspection during business hours—

- (i) by any member or creditor without any payment of fees; or
- (ii) by any other person on payment of such fees as may be prescribed, -subject to such reasonable restrictions as the company may, by its articles, impose.

### Section 86 Punishment for default

13. Define the term “charge” and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.

(MTP MAY 2019)

#### Solution:

The term charge has been defined in section 2 (16) of the Companies Act, 2013 as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Every company is under an obligation to keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company.

Punishment for contravention –

- (i) According to section 86 (1) of the Companies Act, 2013, if any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.
- (ii) According to section 86 (2) if any person wilfully furnishes:
  - (a) any false or incorrect information; or
  - (b) knowingly suppresses any material information;
    - which is required to be registered under section 77, he shall be liable for action under section 447.

### Section 87 Condonation for delay

14. ABC Limited created a charge in favour of Z Bank. The charge was duly registered. Later, the Bank enhanced the facility by another ₹ 20 crores. Due to inadvertence, this modification in the original charge was not registered. Advise the company as to the course of action to be pursued in this regard.

(MTP NOV 2020)

Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in register of Charges.

(MTP MAY 2018)

**Solution :**

**Law:** Section 87 of the Act of 2013 and Rule 12 empowers the Central Government to order rectification of Register of Charges in the following cases of default:

- (i) when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;
  - (ii) when there was omission or mis-statement of any particulars in any filing previously made to the Registrar. Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 (Company to report satisfaction of charge) or Section 83 (Power of Registrar to make entries of satisfaction and release).
- (a) Before directing that the 'time for giving the intimation of payment or satisfaction shall be extended' or the 'omission or mis-statement shall be rectified', the Central Government needs to be satisfied that such default was accidental or due to inadvertence or because of some other sufficient cause or it did not prejudice the position of creditors or shareholders.
  - (b) The application in Form CHG-8 shall be filed by the company or any interested person.
  - (c) The order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.

**Conclusion:** The company is advised to immediately file an application for rectification of the Register of Charges in Form No CHG- 8 to the Central Government under Section 87 of the Companies Act, 2013