

Charges Part - I

Q. What is crystallisation of floating charge? state the circumstances in which floating becomes fixed charge.

→ A floating charge is a charge on floating assets or ~~and~~ unidentified assets of the company.

→ A floating charge attaches to the company's property generally and remains dormant till it crystallizes or becomes fixed.

→ This conversion of the floating charge into a fixed charge known as crystallisation.

→ Conversion of the floating charge into fixed charge known as crystallisation can be triggered by following events...

a) cessation of business

b) Debenture holder intervention

c) happening of event specified in deed.

Q. State the particulars to be filled with ROC in case of debentures secured by charges on assets of the company.

→ The following particulars in respect of each charge are required to be filled with ROC:-

a) date and description of instrument creating charge

b) type of charge

c) total amount secured by the charge

d) general description of the property charged.

e) date of the resolution authorising the creation of the charge

f) In case of property charged details relating to the existing charge on the property acquired.

⇒ Attach the following documents with e-form No. CHG-1/CHG-2

a) a certified true copy of every instrument evidencing any creation or modification of charge.

b) instrument evidencing creation or modification of charge in case of acquisition of property which is already subject to charge together with instrument evidencing such acquisition.

Q What are resources available to charge holder in case of non-registration of charge.

→ where company fails to register the charge within the period of 30 days from the person in whose favour the charge is created may apply to the Registrar for registration of charge along with payment of additional fees or ad valorem fees.

⇒ Registrar may on such application give notice to the company about such application. The company either itself register the charge or show sufficient cause why such charge is should not be register.

→ on failure on a part of the company, the ROC may allow registration of such charge within 14 days after giving notice to company.

→ where registration is affected on application of the person in whose favour the charge is created that person shall be entitled to recover from company the amount of any fee or additional fee paid by him to ROC for registration of charge.

Q Explain the meaning of satisfaction of charge.

→ Satisfaction of charge is another important aspect relating to debts secured by charge.

→ In case full and complete payment of the secured ~~loan~~ charge registered with Roc, the company or charge holder shall within period of 30 days from the date of payment or satisfaction in full of any charge registered under chapter VI of the companies Act give intimation of the same to Roc in form CH6-4 along with fees.

Q Write short notes on maintenance of Register of charge.

→ manner of keeping register of charges -

a) Every company shall keep at its registered office a register of charges in form (No CH6-7) which shall include there in all charges and floating charges registered with Registrar.

b) All 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.

c) The register of charges shall be permanent and the instrument creating a charge or modification there on shall be preserved for a period of 8 years from the date of satisfaction of charge by the company.

Q Explain the power of Roc to make entries in ^{of} ~~the~~ satisfaction of charge in case of non-intimation from the company.

→ There may be times where a company may fail to send intimation of satisfaction of charge to the Registrar but Registrar may on receipt of satisfactory evidence of satisfaction register memorandum of satisfaction. The Registrar shall inform affected parties within 30 days of making the entry in Registrar of charges.

Q Elucidate between second charge and Pari Pasu charge

→ A) Pari Pasu charge - under this a charge is shared by more than one lender in the ratio of their outstanding amount. The prior consent of the existing charge holder is required by the company.

B) Second charge:- with the consent of the first charge holder the particular assets on which charge already created may be provided by other lenders as second charge.

Q can the debt recovered, if the charges are not registered with

→ A) void against the creditor:- if any subsequent charge is created on the same property and the earlier charge is not registered, the earlier charge would have no consequence and the latter charge if registered would enjoy priority.

B) void against the liquidator:-

means that the property will be treated as free of charge, the creditor cannot sell the property to recover its dues.

Basis	fixed charge	floating charge
Nature	it is a legal charge	it is an equitable charge
meaning	security in terms of certain specific property	security mean remains dormant until it is fixed or crystallised.
created on	it is created on fixed assets like land, building or plant or machinery.	it is created on floating assets like stock-in-trade debtors, etc.
Priority	it has priority over floating charge	No such priority
disposing assets	company cannot dispose of the property without the consent of the charge holder	company is free to deal with the property as it deems fit until holders take step to enforce security.