

# Questions & Answers

## Chapter 6 : Registration of Charges

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**Question 1** : 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 2019]

**Answer 1** : Section 83 of the Act of 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 :

- the debt has been satisfied in whole or in part or
- 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.

**Question 2** : 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]

**Answer 2** : Section 83 of the Act of 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 :

- the debt has been satisfied in whole or in part or
- 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.

**Question 3** : 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. **[RTP NOV 2021]**

**Answer 3** : 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 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.**

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).

**Question 4** : 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.

- a. What procedure should the company follow to get the charge registered?
- b. Suppose the company realises its mistake of not registering the charge on 27 th 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]**

**Answer 4** : According to section 77(1) of the Companies Act, 2013 it shall be the duty of every 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 chargeholder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within 30 days of its creation.

However, under clause (b) of first proviso to section 77 (1) the Registrar is empowered to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee.

a. Krish Limited did not register the charge with the Registrar of companies till 15 th March, 2021. In this case particulars of charge were not filed within the prescribed period of 30 days (i.e. till 4th March, 2021).

Taking advantage of clause (b) of first proviso to section 77 (1), 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.

b. 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 27 th 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.

**Question 5** : What are the powers of Registrar to make entries of satisfaction and release of charges in absence of intimation from company. Discuss as per the provisions of the Companies Act, 2013. **[RTP NOV 2019]**

**Answer 5** : Section 83 of the Act of 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 :

- the debt has been satisfied in whole or in part or
- 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.

**Question 6** : 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]**

**Answer 6** : 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** – According to section 86 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.**

**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).**

**Question 7** : Answer the following in the light of the companies Act, 2013–

- i. MNC Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank 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, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013.
- ii. Mr. Antriksh entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr. Antriksh comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr. Antriksh saying that he ought to have had the

knowledge of charge created on the property of the company. Explain with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct? [MTP MAY 2019]

### Answer 7 :

- i. The charge in the present case was created after 02-11-2018 (*i.e.* the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018.

Initially, the prescribed particulars of the charge together with the instrument, 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 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 MNC 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.

If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, 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 *advalorem* fees.



Since first sixty days from creation of charge were expired on 11th May, 2019, MNC Limited can still get the charge registered within a further period of sixty days from 11th May, 2019 after paying the prescribed *advalorem* fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

- ii. **Notice of Charge** : 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, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Thus, the contention of NRT Ltd. is correct.

**Question 8** : Briefly explain the provisions enforced by the Companies (Amendment) Act, 2019 when a charge created before 02-11-2018 [before the commencement of Companies (Amendment) Act, 2019] is not registered within the prescribed period of thirty days as provided in Section 77 (1) of the Companies Act, 2013. **[MTP MAY 2020]**

**Answer 8** : As per Section 77 (1) of the Companies Act, 2013 every company creating a charge :

- a. within or outside India
- b. on its property or assets or any of its undertakings
- c. whether tangible or otherwise, and

d. situated in or outside India

is required to register the particulars of the charge with the Registrar within thirty days of its creation.

In case the charge was created before 02-11-2018 [*before the commencement of Companies (Amendment) Act, 2019*] and it was not registered within the prescribed period of thirty days of its creation, clause (a) of the first Proviso to Section 77 (1) states that the Registrar may, on an application by the company, allow such registration to be made within a period of **300 days** of such creation.

According to clause (a) of the Second Proviso to Section 77 (1), if the registration is not made within the extended period of 300 days, it shall be made within six months from 02-11-2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.

**Question 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]**

**Answer 9** : 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 :

- the debt has been satisfied in whole or in part; or
- 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.

**Question 10 :** ABC Limited created a charge in favour of Z Bank. The charge was duly registered. Later, the Bank enhanced the facility by another Rs.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]**

**Answer 10 :** 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

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*).

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.

The application in Form CHG-8 shall be filed by the company or any interested person. Therefore Z 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.

**Question 11** : How will a copy of an instrument evidencing creation of charge and required to be filed with the Registrar be verified? [MTP MAY 2021]

**Answer 11** : 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

- i. ***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.
- ii. ***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.

**Question 12 :** Mr. A is working with a reputed Chartered Accountant firm in Delhi. After gaining an experience of 5 years, now Mr. A is planning to open his own firm A and Associates. He has now purchased a commercial property in Delhi belonging to Kesha Limited after entering into an agreement with the company. At the time of registration, Mr. A comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of Kesha Limited is correct? Give your answer with respect to the provisions of the Companies Act, 2013. **[MTP MAY 2021]**

**Answer 12 :** 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. A, therefore, ought to have been careful while purchasing property and should have verified beforehand that Kesha Limited had already created a charge on the property.

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

**Question 13** : Mr. Pam purchased a commercial property in Delhi belonging to ABC Limited after entering into an agreement with the company. At the time of registration, Mr. Pam comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of ABC Limited is correct? **[MTP NOV 2021]**

**Answer 13** : 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. Pam, therefore, ought to have been careful while purchasing property and should have verified beforehand that ABC Limited had already created a charge on the property.

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

**Question 14** : Define Charge. Who has the authority to verify the instrument of charge created for property situated outside India? Give your answer as per the provisions of the Companies Act, 2013. **[MTP NOV 2021]**

**Answer 14** : Section 2(16) of the Companies Act, 2013 defines “charge” 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.

**Where the instrument or deed relates solely to the property situated outside India**, the copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar 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 authorized officer of the charge holder, or
- under the hand of some person other than the company who is interested in the mortgage or charge.

**Question 15** : Mr. Parth purchased a commercial property in Delhi belonging to PQR Limited after entering into an agreement with the company. At the time of registration, Mr. Parth comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in his name contending that he ought to have the knowledge of charge created on the property of the company. Explain, whether the contention of PQR Limited is correct? Give your answer as per the provisions of the Companies Act, 2013. **[MTP MAY 2022]**

**Answer 15** : 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. Parth, 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.