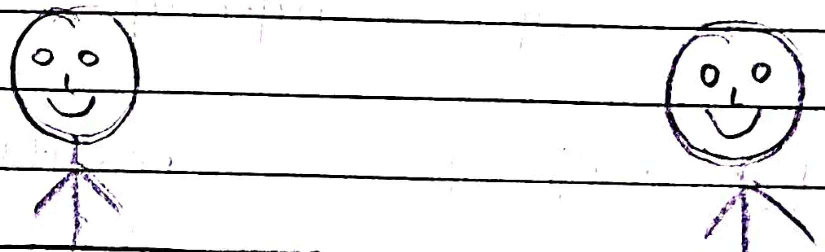
REGISTRATION OF CHARGES

Section 77 to 87 covered of companies Act, 2013

6 to 10 marks



Lender	Borrower
↓	↓
Bank	Company

Concept 1 : Definition of charge has been defined in

Section : 2

↓

(16)

~~has been di~~

→ Any interest or lien created on the property or assets of the company or on its undertakings either as a way of security or mortagage.

- CROX :-

Interest or lien
created

on the property or Assets or undertakings
of company

either By way of → security
or
→ mortgage

→ If any company take loan either Term or working capital loan by offering property or assets as security.

→ Then as per company Act, 2013 it is required to create charge on such property or Assets in the favour of lender.

security

Mortgage   Hyphothecation   Pledge

Stock   Debtors   Jewellary   car

→ Why charge is created ?

As Debt is taken by a company

To secure the Repayment from the Borrower (company)

Charge is necessary to created on assets of company.

Once the charge is created on the propert of company, it must be registred with ROC

Concept 2 : Type of charge

Fixed charge or specific charge

- It is created on the assets which is specific and ascertain-able.

Ex:- PK Ltd take a loan from BC Ltd against the security of its office Building. In this

Flotting charge

- It is created on a particular class of assets
- It is not on a

case, the co. shall create a charge on specific asset i.e. office building shall be fixed charge. The co. can sell this office Building either by way of repaying Amt in full or after seeking permission from the charge holder.

- once a fixed charge is created on any property, company loses its right to Dispose without approval of lender.

Ex: smart shoes Ltd. manufactures leather goods. The RM in the form leather, which is FC, may be used by co. to manufacture leather goods without seeking any permission from the lender.

specific property.

- The company is here to dispose the asset on which floating charge is created.

Ex: Stock, Inventory, Debtors, retailer shops

→ The Assets on which floating charge is created, company is free to dispose such assets. But till the date such floating charge is not converted into fixed charge

Ex:- A Ltd —taken Loan→ Bank
fails to pay / liquidation → crytalisation
→ neither sold or uses in business Activity

Floating charge —convert→ Fixed charge
crytalisation

- crytalisation of floating charge may occur in following cases:

→ When the company goes into liquidation

→ When official Reciever is Appointed.

→ Where company stops all Business Activity.

→ company made Default in payment of Debentures or loan or creditor liability.

→ As per loan Agreement, event happens which can forward to crystallisation.

concept 3

Section 77 : Particulars of charge to registes with ROC

company → property →
- Tangible
- Intangible
- Movable
- Immovable

property: within India or outside India

→ If any charge is created, it is Duty of company to Register such charge with ROC within 30 Days from create such charge

company → Register charge → ROC

E-form

CHG - I

+

Instrument of creativity

charge → sign

+

Prescribed fees

sign → chargeholder

The person in whose favour charge is created

sign → company

sign → Preserve for 8 year from the Date of satisfaction of charge

Non applicability of section 77 :-

→ The company is exempted not to register charge u/s 77 which are prescribed by RBI

7

CROX :- Instrument of change

It must be registred with ROC in 30 Days from creative change

sign By
company change holder

Preserve for 8 years from the date of satisfication of change

verification of Instrument of change

Instrument or deed relates to

property situted is in India (whouy or partly)

the copy shoube be verified by a certificate issued either

property situated is outside India

- Under his hand of
  Director of company OR CS of the company

OR

- Under his hand by the authorised officer of change holder.

- Under the seal of co.
- Under the hand
  Director OR CS
- Authorised officer of the chargeholder or any part[y] other than company who is interested in such change.

Concept 4 :
Time for Registration of charge

Before 2nd NOV. 2018

After 2nd NOV. 2018
↓
charge must be registred with ROC with in 30 Days from creative charge (Normal fees)

If not created with; then in next 30 Days it must be registred with ROC
(Normal fees + Additional fees)
(change create → 60 Days)

If fails to register such change with in 60 Days, from creating change then in next 60 Days it must be Registred with ROC
(Normal fees + Additional fees + Advoles fees)
↓

% of the value

↓

according to value of change creation

↓

value of security

- CROX :-

→ within 30 Days = Normal fees

→ Next 30 days (30 + 30) = Normal fees + Additional fees

→ Next 60 days (30 + 30 + 60) = Normal fees + Additional fees + Advalorem fees

CHG-1 ⟹ company of chargeholder ⟶ ROC

CHG-2 ⟹ ROC < company / chargeholder

concept 5 : procedure for extension of tim

company is required to file CHG-1 to ROC	company is required to give Declaration that they sufficient cause for date Registration of charge — Director OR CS	the Rights of the lender has not leads adversly affeted & chargeholder has the same right as if Reg. is carried by co. within 30 Days	company is paying Additional or Advolerm fees as required

→ If charge is registered by ROC, then ROC issued a certificate of Reg. of charge in form CHG-2

To the company & charge holder

→ This certificate is conclusive evidence that company has registred the charge on the property in the favour of lender & ~~companie~~ complies the rule of the chapter VI "Reg. of charge" u/s 77

Concept 6

Section 78

Application for Registration of charge by chargeholder

company $\xrightarrow{\text{CHG-1 u/s 77}}$ ROC

Instrument of charge + fees

charge holder $\xrightarrow{\text{CHG-1 u/s 78}}$ ROC

→ The person in whose favour charge is created (charge holder) can apply to ROC for registration of charge on property.

Along with Instrument of creative charge + prescribe fees

→ On the application (CHG-1) received by ROC from chargeholder.

Registral $\xrightarrow[\text{issue}]{\text{shall}}$ Notice

↓

company

Object ↓

The company if objects on the Application to ROC by ~~share~~ changeholder

↓

Then ROC will not allow such Registration in favour of changeholder u/s 78

No object ↓

within 14 Days

↓

Then ROC will Register such charge in favour of changeholder

→ If company files Application u/s 77, then ROC will not register such change u/s 78.

changeholder $\xrightarrow{\text{CHG - 1}}$ ~~Instrument~~ of charge

+

prescribed fees

Normal, Additional, Advolerm

paid by shargeholder

→ Now chargeholder has Right to Recover such Amount paid as fees from the company.

→ once the charge is Registred u/s 78, then ROC will issue certificate of Reg. of charge in form CHG-2.

consequences (Results) of Non Registration under section 77 :-

(i) security contrat ⟶ void
But it not void - ab- initio.
subsequent Registration, then it will become valid.

(ii) At time of Liquidator, creditor will be treated as ~~Liquidatio~~ unsecured creditor

(iii) But It doesn't means, Due to Non-Registration of charge, company has been Exempted from paying the Debt Liability.

Concept 7 : $\boxed{\text{Modification of charge}}$

79 (a)

In case the charge on the property of company is already required u/s 77 & if such property is sold with the company who is acquiring it has a duty to register charge u/s 77 & the earlier charge will get vacated

↓

charge from Borrower

79 (b)

Modification in charge due to change in terms & conditions of charge which is registered u/s 77 already

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↳ Increase / Decrease of limit / loan Amt.

↳ change in Repayment schedule of loan

↳ Partial Redue of loan Amt

↳ chang in agreement

↓

This change need tobe registered to ROC under section 79

↓

Now ROC will issue certificate of modification of charge u/s 79 in CHG - 3 person must be ought to have been careful while purchasing property & should have verified.

concept 8 :

Section 80

Deemed Notice of charge

↓

Every person who is enter into any transaction with the company Related to acquisation of company is property need to be more cautious and careful.

↓

He must go through Records maintained by ROC, Register of charge by paying prescribe fees, As these records can be inspected by any person by paying fees to ROC at www.MCA.gov.in

↓

So As per sec 80 of co. Act, 2013 law always assume that a person who is acquiring co's property has already Notice of charge & he has inspected all the records of charge related to company's property.

↓

If any loss incurred to such person, then company is ~~not~~ liable for such loss, law assume that such person has already the Notice of charge. So, Every person must make reasonable inquiry before acquiring co's property

MANAS Limited —short term loan 40 lakh→ comm. Bank

MANAS Limited → change - Buiding Registred u/s 77 → comm. Bank

↓

Buiding sold to vishal → section 80 → Deemed Notice

↓

law assume that vishal has full Knowledge about change before acquiring Buiding

↓

If any loss incum to vishal, IS MANAS Ltd. is liable?

NO & sec: 80

concept 9

Section : 81
Register maintain by ROC

→ ROC will maintained a Register which contains particular of change created on company property.

→ such Register is maintained by ROC in electronic form at the site www. MCA. gov. in & such Register can be inspected by any person by paying prescribed fees.

concept 10

section : 82
satisfication of charge

→ company has to give intimation to ROC related to satisfication which is already registred in form CHG-4

↓

The company intimate to ROC within 30 Days from satisfication of charge

↓

period of extension } : Extension allowed to company for intimation to ROC for satisfication of charge for next 30 Days.

Normal provision co. law → 300 Days → Advelorm fees

→ on Receipt of CHG-4 the ROC will issue Notice to changeholder

↓

within 14 Days

objection from changeholder

↓

Registrar will record this fact & inform to company

↓

If CHG-4 is signed by changholder

↓

then ROC will not sent Notice to changeholder repartialy satisfication of change

No objection from changeholder

↓

Record it in Register maintained by him & inform to co.

↓

Also issue certificate of satisfication of change in CHG-5

concept 11

Rule 8

section 83

Power of Registrar to make entry of satisfication in absence of intimation by co.

→ General provision :-
As per sec : 82, company must inform to ROC for satisfication & release of charge of charge but if such intimation is not received by ROC from company.

AND ROC has evidence or he is satisfied the
(i) Debt on which Assets is secured has been paid
(ii) Part of property has been Released from charge
(iii) Property is ceased to be part of company Undertakings.

→ section 83 gives power to ROC to make entry in the register for satisfication of charge & ROC will inform to Both the affected parties — company & chargeholder

→ When ROC will inform to Both the parties

↓

within 30 Days

↓

from the entry in the Register for satisfication of charge in form CHG-5

concept : 12

section : 84

Intimation to ROC & company for appointment of manager / Receiver

→ Any person obtains an order for the appointment as a receiver or manager of property which is subject to charge

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then person shall file → Notice within in 30 Days of passing order CHG-6 → ROC / company

→ Not only on Appointment, also file notice to company & ROC at time when he ceases to be manager or reciever.

↓

ROC will Register such fact

Concept : 13

Section : 85
Register maintained by co.

Related to charge

Where : maintained → Registred office of co.

form → physical form (OR) / oral form

Maintaind (order) → chronological Order

↓

Any transaction in which charge is created must be recorded in this Register with in 7 Days.

Reasponsible for sign — Director (OR) CS

concept 14 :

section : 86(1)

punishment for contravention

- change Register
- satisfication
- modification

- If company makes any default — fine → 5 Lakh
- Every defaulting officer is punishable with fine → ₹50,000

Further, any person willfully Default (जान बूझकर)
section 447

Highest penalty law

false (or) Incorrect Information (or) Knowingly suppresser concept 15

pwe 12

1) section : 87

Rectification by CG of the Reg. of changes
↓
central Govt.

Now CG has Developed such power u/s 87
↓
Regional Director (RD)
↓
CG Pass order for rectification in Reg. of changes maintained by ROC u/s 81
↓
CG —Application (CHG-8)→ company & Chargeholder

Ommission to give intimation regarding satisfication of charge and payment within specified time

OR

Any misstatement (i.e. ommission) in the particular filed in ~~difficult~~ different forms.

⇓

If CG/RD is satisfied that such ommissi

Accidental

Inadvertence (Negligence)

No perjudice of any creditor/sharehold

Then CG $\xrightarrow[\text{order}]{\text{CAN PASS}}$ ROC

Direct Rectification in Register maintained by ROC u/s 87

Allow extension of time. (more than 300 Day)

↓

If not ~~co~~filed within 300 days.

SECTION CHART

sec :-	77	Filling particulars of charge to ROC
sec :-	78	Application By chargeholder to ROC for Reg. of charge
sec :-	79	Modification of charge
sec :-	80	Deemed Notice
sec :-	81	Reg. maintained by ROC. ~~of~~ of charge
sec :-	82	satisfication of charge
sec :-	83	Power of ROC to Register satisfication of charge in absence of intimation by company
sec :-	84	Intimation By manager / Receiver to ROC & company
sec :-	85	Reg. of charge maintained by co.
sec :-	86	Punishment for contravention
sec :-	87	Rectification by co in Reg. of charges