(4 Marks)

Chapter- 6

Registration of Charge

→ Section used:- Chapter - VI of Companies Act - 2013

Provides about Creation, modification and satisfaction (payement of charge through

Sections ⇒ 77 to 87

→ Rules used: The Companies (Registration of charges) Rules - 2014

→ Forms Used: CHG-1 - Application for registration of creation of charge

Chapter - Outline

	C	M (modification)	S (satisfaction)
→ Definition of charge → Types of charge on the basis of nature of charge Assets → modes of Creation of Charges	When charge is created (Sec. 77)	When there is changes in ~~modification~~ terms & Condition of charges (Sec - 79)	full payment of amount of loan/ debenture/ deposit (See - 82, 83)

Registration of Charges

Concept - 1 :- Charges, modes of Creation of charges & Types of charge [sec 2(16)]

(I) Definition of charges [sec - 2(16)]

means ~~an~~
an interest or
lien (right to retain possession of goods)
Created on the property
or assets of a Company.
or any of its undertaking
(Branch/unit) as security

Modes/Method of Creation of Charge:

Pledge ⟷ (movable property) ⟷ Hypothecation

Immovable property → Mortage

Pledge	Hypothecation	Mortage
→ When borrower also gives profession of movable property to the lender	It is also created on movable property but possession of property remains with borrowers	Here, Security is created on Immovable property

III Types of charge [on the basis of nature of assets]

Fixed Charge | Floating Charge

	B.O.D.	Fixed charge	Floating charge
(1)	Meaning.	When a borrowing co. creates charge on specific assets which can be easily identified and which value is fixed. then such charge is called as fixed-charge	When a borrowing co. creates a charge on class of assets. which value is fluctuating, then it is called as floating charges
	Example	Charge created on land, building. plant & machinery of brower company.	Inventory / Stock of finished goods, raw-material, debtors etc
	Right to deal (sell/dispose)	The borrower co. can't sell such assets on which fixed charge is created unless it is approved by the chargeholder.	Here the borrower co. can deal (sell/dispose) the assets on which floating charges has been created in ordinary course of business.
	Applicability of principle of Crystallisation	The fixed-charge can not be crystallised	The floating charges can be converted into fixed-charge and right to deal will lapse.

Concept - 2: Crystallisation of a floating charge:

(I) Meaning :- It is a process by which floating charge is converted into fixed - charge

II Effect: After Crystallisation, the right of borrower Co. to deal in the charged assets become unavailable.

III Cases/ Circumstances, when floating charge is Crystallise

(a) Violation of Condition of floating charge
eg: failure of give quaterly stock - statement,

b) Change in object of Company

c) When Company goes into winding - up/ liquidation

d) Default in payment of instalments of loan

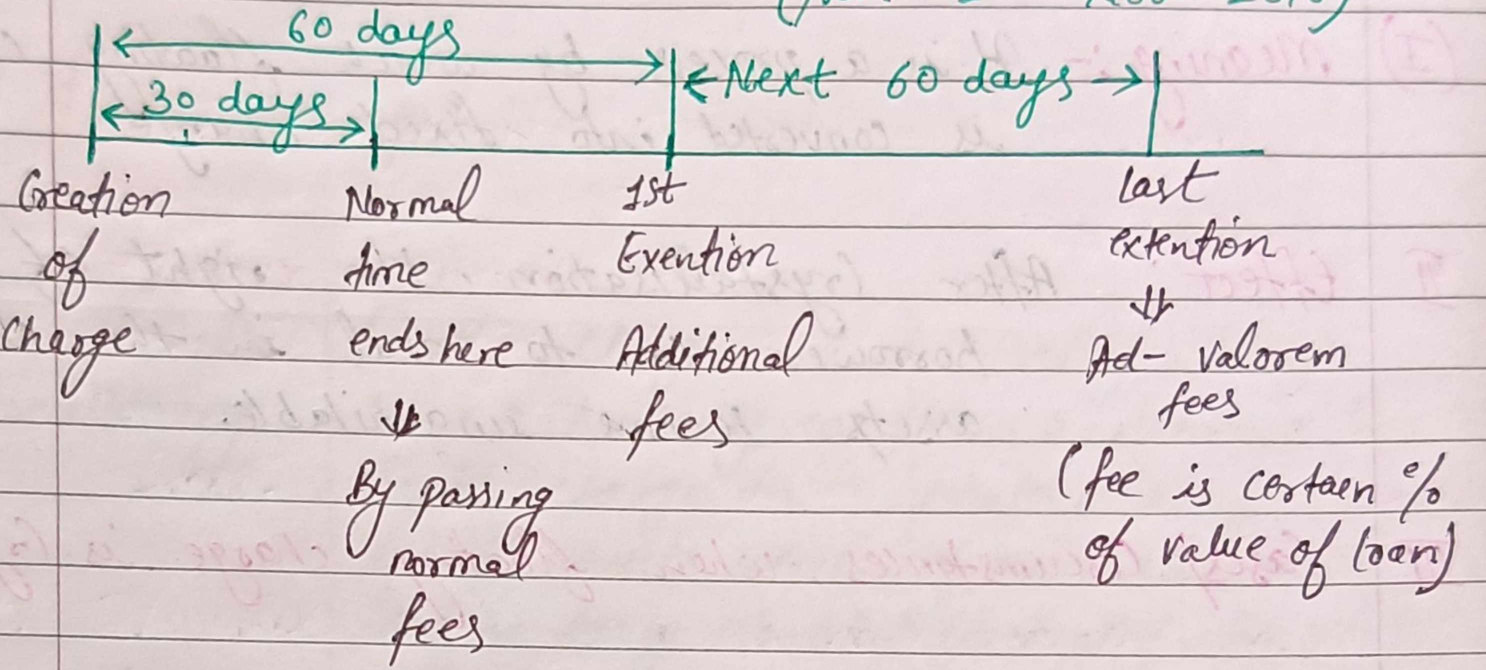
Concept - 3 :- Registration of Creation of charge (sec 77) + Consequence of non- registration (Sec-86)

(I) Duty of Co. to registrar - charge [Sec - 77 (1)]

→ Every Company
→ Creating a charge (wheather in India or outside India)
Shall get the particulars [details] of charge registered with RoC.
Form CHG-1 or CHG-9 (in case of Debenture)
along with "Instrument of charges"

II : Time - limit for registration of charge:

(from 2nd Nov. 2018)



→ **Application for extension :-** The Co. shall apply for ~~gifting~~ getting extension of time by making application in form CHG-1 or CHG-9 as the case may be. This application shall be certified by co's CS or director that belated filing shall not affect any right of any creditors.

III . Issuance of Certificate of registration [sec 77(2)]

→ The ROC will issue certificate of registration of charge in form CHG-2 [fresh registration] or in form CHG-3 (in case of modification of charges), to the chargeholder of the borrower company.

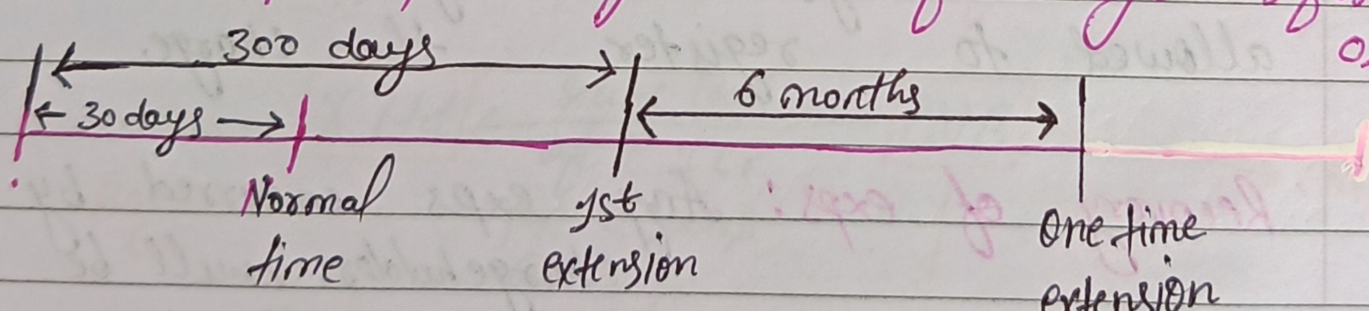
III → "Certificate of Registration" is the conclusive evidence that requirement of this Act w.r.t. (with respect to) charge have been complied with.

IV Consequence of non-registration [Sec - 77(3)]:

a) Unregistered charge will be void:' If a charge is not registered, then liquidator will not consider it and chargeholder will become unsecured lender - Simply, unregistered charge is void against co's liquidator.

b) Loan become immediately repayable:→ Non-registration of charge will not affect the contract/obligation for repayment of money secured by charged.

Note:- T/L for registration of charge before 02/11/2018



c) Punishment for non-registration of charge [Sec-86]

→ Any Contravention of this chapter VI [i.e., registration of charge) will attract a penalty of ₹5 lakh on company and every officer in default will be liable of penalty of ₹50,000

Concept - 4 :- Application for registration of charge by chargeholder [Sec 78]

(I) When chargeholder gets the right :→ After failure of co. to registrar charge within normal time-limit i.e., 30th days of creation of charges

II Steps : (a) The chargeholder will apply to ROC

b) The ROC shall give a notice to the borrower company, about such application.

c) Registration of Creation of charge :- If Company neither register the charge itself nor show any cause (objection)

Within 14 days then chargeholder will be allowed to register the charge.

III Recovery of exps : Any exps encurred by chargeholder, will be borne by company i.e., co. shall reimburse (refund) chargeholder

[Sec -79]

Concept-5:- Further Cases of registration of charge

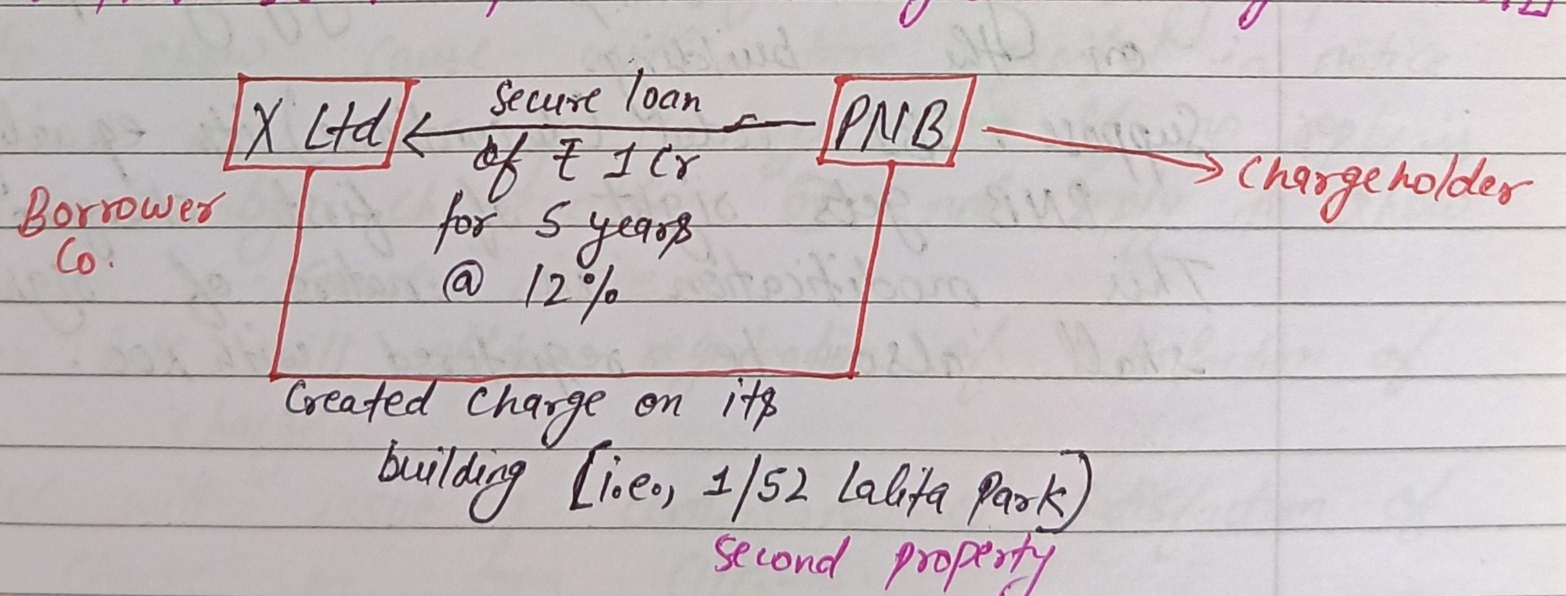
About Section-79 specifies to new cases, where charge shall be registrar by following provision of Sec 77:

When Company accquires any propeoty which is subject to charge (i.e., the vendor of such property has already taken loan & Created charge, then the purchaser Company shall get registered such loan as per sec 77

RIL → own Reliance Garden and has taken loan of ₹ 500 crore against such "Reliance-Garden". RIL sold such garden to Adani Ltd. along with loan.

This ~~q~~ acquisition shall be registered with ROC.

b) When there is modification in registered charge [Sec 79(b)]



→ ~~Manda~~ Mandatory registration of modification Sec 79(b)

It require compulsory registration of modification in terms & conditions of charge by following provision sec 77, ~~After registration~~ of ~~modification~~

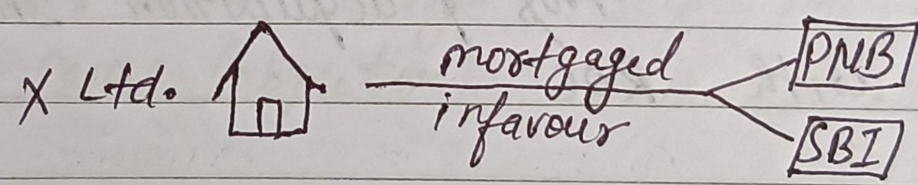
After registration of modification of charge, the ROC will issue a certificate of registration of modification in form CHG-3

Examples of modification of charges:

a) Change in amount of loan
b) Change in tenure (time-period)
c) Change in rate of interest [Except, such change which happens due to change in REPO rate, prescribed by RBI

d) Where the modification is by ceding (ignoring) a "Pari-Passu charge"
[Equality of rights

E.g.



Presently, both banks are enjoying equal rights on the building.
Suppose, SBI ceded (discontinue) its equality and PNB gets right of first chargeholder.
This modification in nature of rights, shall also be registered with ROC.

Concept - 6: Satisfaction of charge [sec - 82, 83]

I About Satisfaction of charge: It means full payment of borrowed amount or ~~res~~ release of partial or full part of pledged / mortgaged property.

II Provision about Satisfaction of charge [sec - 82]

1. Duty of Company. The co. shall intimate about satisfaction of charge to ROC, within 30 days of such payment / Satisfaction. If co. fails to intimate about satisfaction of charge within normal time, then co. may approach to ROC, which may allow 300 days from the payment of charge.

2. Duty of ROC: After receipt of information from company, the registrar shall send a notice to chargeholder, calling upon him to show cause within time specified in notice (but not exceeding 14 days). → If no reply is sent by chargeholder or not reply to show cause notice,

→ then ROC will allow registration of satisfaction of charge.

ROC will issue a certificate of Satisfaction of charge in form CHG-5.

Imp. notes

(i) If chargeholder shows cause/object the satisfaction, then ROC will not record the satisfaction of charge and give information about the reason of not registering - satisfaction of charge.

(ii) Notice to chargeholder is not required if intimation of satisfaction is signed by both company & chargeholder.

(iii) Preservation of Records: The instrument creating ~~a ch~~ a charge/modification shall be preserved for a period of 8 Years from the date of satisfaction of charge by the company.

III Entry of satisfaction of charge by ROC without intimation from borrower company [Sec-83]

E.g. RIL, sold its Jio Garden to Adani after RIL paid ₹ 10Cr to PNB and Jio-Garden was released. Here Adani Ltd. may give evidence about full or part payment release of assets to ROC.
ROC may registered ~~of~~ the satisfaction of charge & inform the affected parties in form CHG-5.