SUMMARY OF CHARGE AS PER COMPANIES ACT, 2013

- ➔ Charge means an interest or lien created on the properly or assets of a company or any of its undertakings or both as security and includes a mortgage.
- ➔ Charge can be Fixed or Floating.
- ➔ Charge created on a specific assets is called Fixed charge.
- ➔ Charge created not on a specific property but on a block of property whose value keeps on fluctuating is called Floating charge. For eg – Stock in trade.
- ➔ Conversion of Floating charge into Fixed charge is called crystallisation of charge.
- ➔ Charge can be created on –
  - i) Movable Property
  - ii) Immovable Property
  - iii) Intellectual Property, which can be present or future property.
- ➔ When a charge is being created in India or Outside India on the property/ asset/ undertaking of the company whether tangible or intangible situated in India or Outside India then such charge is required to be registered with RoC
- ➔ For registration of charge the particulars of charge together with a copy of instrument, if any, need to be filed with RoC in **Form CHG – 1** (for other than debentures) and **Form CHG – 9** (for debentures) within 30 days of creation or modification of charge duly signed by company and charge holder.
- ➔ If company fails to file Form CHG – 1 and Form CHG – 9 within 30 days of creation or modification then **RoC** shall a right to provide condonation of delay after 30 days but within 300 days from the date of creation or modification of charge on payment of additional fees and **on sufficient cause.**
- ➔ For availing or making application for condonation of delay with RoC **Form CHG – 10** along with a **Declaration** need to be provided by the company that such delayed filing shall not adversely affect the rights of the creditors and such declaration need to be signed by CS/ Director of the company.
- ➔ If company fails to file Form CHG – 1 and Form CHG – 9 within 300 days of creation or modification then condonation of delay need to be provided by **Central Government(CG)**.
- ➔ For claiming condonation of delay from CG **Form CHG – 8** is required to be filed along with the **sufficient cause**.
- ➔ The condonation order issued by the CG is required to be filed with RoC in **Form INC – 28** along with the specified fees.

- ➔ If a company fails to register the charge within specified time, then the Charge holder (person in whose favour charge being created) shall also have a right to file Form CHG – 1 and Form CHG – 9.
- ➔ On receipt of the above application RoC shall forward same to the company.
- ➔ The company may either register the charge itself or specify the reason why charge has not been registered.
- ➔ If the company fails to register the charge, then RoC shall register the charge within 40 days after giving notice to the company.
- ➔ On filing of Form CHG – 1 and Form CHG – 9 RoC will allow such registration and shall issue the following certificates-

  i) **Form CHG – 2** (Certificate for registration of creation of charge)

  ii) **Form CHG – 3** (Certificate for registration of modification of charge)

  Note: The certificate issued by RoC shall be a conclusive evidence that all the requirement for the registration of creation/ modification of charge has been duly complied.
- ➔ The requirements for registration of charge shall also apply upon –

  i) Company acquiring property which is subject to charge.

  ii) Modification of charge (Modification in terms of original charge registered).
- ➔ When company makes the entire repayment on any charge amount then such company need to inform RoC about such satisfaction of charge by filing **Form CHG – 4** within 30 days of satisfaction of charge.
- ➔ If Form CHG – 4 is not filed within 30 days of satisfaction of charge then application for condonation of delay need to made to CG.
- ➔ On receipt of Form CHG – 4 RoC shall issue a notice to the charge holder requiring the charge holder to submit their representation within 14 days as to why such satisfaction of charge should not be registered.
- ➔ On receipt of such notice if the charge holder-

  i) Submit their representation within 14 days then RoC will forward such representation to the company.

  ii) If fails to submit their representation within 14 days then RoC will register satisfaction of charge.

  Note: If Form CHG – 4 have been filed with RoC along with an acknowledgement/ acceptance given by the charge holder then aforesaid condition shall not apply.
- ➔ On filing of Form CHG – 4 once RoC being satisfied, RoC shall issue a Certificate of registration of satisfaction of charge in **Form CHG – 5**.
- ➔ If any person appoint any receiver / manager to manage the charge property by virtue of an order or pursuant to the agreement then intimation of such

appointment need to be given to RoC by filing **Form CHG – 6** within 30 days of appointment. Similarly for cessation of receiver Form CHG – 6 is required to be filed with RoC within 30 days of cessation.

➔ If a charge is not being registered then following are consequences of non-registration-

i) Such charge will become void for creditor and liquidator.

ii) The borrower need to make payment immediately.

➔ Register of charge need to maintained by company in Form CHG – 7 and shall also be maintained by RoC in chronological order.

➔ Register of charge shall be available for inspection by any person on payment of prescribed fees.

Regards

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