



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

CL: MCA: 2023

Dr. Manoj Govil, IAS
Secretary
Ministry of Corporate Affairs
Government of India
Shastri Bhawan
New Delhi-110001

Ministry of Corporate Affairs

Dy. No. 1936/R & IMCA

Date 25/8/2023

August 24, 2023

Subject: Amendments in Section 77 of the Companies Act, 2013
Reference: ICSI Letter dated January 17, 2023

Dear Sir,

This has reference to the ICSI letter dated January 17, 2023 pertaining to section 77 of the Companies Act, 2013 pertaining to Registration of Charges. As per the current provisions of the law, the initial time period stipulated for registration of charges by a company is 30 days. The same, on an application made by the company to the Registrar, can be extended by 30 days and by a further period of 60 days after payment of prescribed *ad valorem* fees. Non-compliance with these provisions tantamount to harsh penalties for the company as well as the officer-in-default. It further attracts the provisions of section 447 related to Fraud.

Although, it is quite understandable that the provisions of the law have been drafted to partake the goal of good governance; however, the Institute has been receiving requests from stakeholders to share the challenges being faced by them in this regard. Even if the registration of any charge is missed due to some genuine reason and the company has not filed charge within the mandated period, there is no option available under the Companies Act, 2013 and rules made thereunder to the Company or Charge-holder or Banks / Financial Institutions to register the charge after the prescribed time period of 120 days of creation.

The same not only creates liability for penalty, but as per section 77(3) of the Companies Act, 2013, a charge created by a company but not duly registered cannot be taken into account by the liquidator at the time of insolvency leading to the creditor being rendered as an unsecured creditor at the time of distribution of liquidation proceeds under section 53 of the Insolvency and Bankruptcy Code, 2016, thus creating a situation of deadlock.

Prior to the Companies Act, 2013, in terms of section 637B of the Companies Act, 1956, the Central Government was empowered to condone the delay of any number of days in case the document is not filed within 60 days from the date of creation of charge.

Manoj Govil

Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। इष्टकारं कुरु। बोधेनैव कुरु।
इष्टकारं कुरु। बोधेनैव कुरु।

Mission

"To develop high calibre professionals facilitating good corporate governance"



Submission

In view of the above issues and their long-lasting impact on the overall governance of the company, it is suggested that:

- (a) A mechanism may be put in place to register the charge after the total time period of 120 days. The registration may be allowed either with approval from the Central Government under section 460 or by paying *ad valorem* fees.
- (b) The rate of *ad valorem* fees should be charged from the number of days delayed and not from the date of creation of charge. An approval route can be given by the Ministry of Corporate Affairs in this regard.

We hope that the above submission would be considered favorably.

We shall be pleased to provide any further information in this regard on hearing from your goodself.

Thanking You,

Yours Faithfully

(CS Manish Gupta)

President

The Institute of Company Secretaries of India