SECURING DEBT IN CORPORATE INSOLVENCY: THE CRYSTALLISATION OF FLOATING CHARGES UNDER SECTION 100 OF THE TRANSFER OF PROPERTY ACT, 1882

Kanishk Kaushik, LL.B. (Hons.), Jindal Global Law School, O.P. Jindal Global University

ABSTRACT

A floating charge sits over a shifting pool of assets until some triggering event pins it down to what the company owns at that moment. This paper traces that process crystallisation through the framework of Section 100 of the Transfer of Property Act, 1882 and asks what happens to it once a company enters insolvency. Section 100 was drafted for immovable property in 1882, decades before Indian corporate finance began routinely securing loans against inventory and receivables so the statute never quite fits the transaction it is asked to govern. The paper follows that mismatch through the case law from the Supreme Court's account of what a charge actually is, through the priority rules under Section 48 of the Transfer of Property Act, to their collision with the Section 53 waterfall under the Insolvency and Bankruptcy Code, 2016. It argues that the current framework leaves secured creditors facing an unpredictable choice at the point of liquidation, and proposes three statutory interventions: codifying floating charges and their crystallisation triggers directly in statute, clarifying how Transfer of Property Act priority operates inside the Code's ranking tiers, and softening the subordination of a secured creditor's unrecovered balance.

INTRODUCTION

Corporate debt in India rarely rests on a single immovable asset. A lender extending working capital to a manufacturing company is far more likely to take security over stock, receivables, and plant assets that turn over daily and cannot sensibly be pledged one by one. The floating charge answers that problem: it hovers over a changing pool of property without attaching to any single item, until an event of default causes it to "crystallise" and fasten onto whatever the company holds at that instant.

The trouble is that the Indian statute most naturally suited to describing a charge Section 100 of the Transfer of Property Act, 1882 was never built with this transaction in mind. It speaks only to immovable property, at a time when the floating charge as a commercial device barely existed in India. What has filled the gap since is a mixture of contract, company law registration requirements, and imported common law doctrine, applied uneasily alongside a statute that does not quite reach the case. This paper examines that uneasy fit, and then follows the further complication introduced by the Insolvency and Bankruptcy Code, 2016, whose Section 53 waterfall overrides the priority a secured creditor believed it had secured under the Transfer of Property Act.

THE STATUTORY FOUNDATION: WHAT SECTION 100 ACTUALLY CREATES

Section 100 provides that where immovable property is made security for the payment of money, by act of the parties or by operation of law, and the transaction does not amount to a mortgage, the person entitled to that payment has a charge on the property.[1] The Supreme Court's fullest treatment of what this creates is in *Dattatreya Shanker Mote v. Anand Chintaman Datar*, where the Court distinguished a charge from a mortgage on the ground that a charge, unlike a mortgage, transfers no interest in the property at all it is purely a security right, a claim on the property for repayment rather than an estate in it.[2] Every mortgage will therefore qualify as a charge, but a charge is the broader category and need not be a mortgage.

This distinction matters practically because a charge, creating no proprietary interest, leaves the chargor free to deal with the property in the ordinary course of business.[3] That freedom is

[1] Transfer of Property Act, 1882, § 100, No. 4, Acts of Parliament, 1882 (India).
[2] Dattatreya Shanker Mote v. Anand Chintaman Datar, (1974) 2 SCC 799, ¶¶ 14–15, 17.
[3]Dattatreya Shanker Mote, supra note 2, at ¶ 17.

precisely what makes the concept usable for a revolving pool of assets: a company can keep trading selling stock, collecting receivables, replacing inventory without the charge holder's consent, because nothing has yet attached to any specific item. It is also a looser statutory form than a mortgage. In *M.L. Abdul Jabbar Sahib v. M.V. Venkata Sastri and Sons*, the Court held that a charge created by the act of parties does not attract a mortgage's formal attestation requirements, since the two instruments serve different legal functions and the Transfer of Property Act does not impose mortgage-style formality on a charge.[3] That flexibility is a large part of why the floating charge became a heavily negotiated contractual device rather than a standardised statutory one parties could shape it freely, with the Contract Act and, later, the Companies Act, 2013 filling in around the edges.

THE GAP: MOVABLE ASSETS AND THE LIMITS OF SECTION 100

None of this, however, answers the question a modern floating charge actually poses, because Section 100 is expressly confined to immovable property.[4] A charge over a company's stockin-trade or book debts the typical subject matter of a floating charge in commercial lending sits entirely outside the section's wording. The Transfer of Property Act, drafted in 1882, simply had no floating pool of movable collateral to legislate for.

Indian practice has closed this gap by borrowing rather than legislating. The conceptual architecture of crystallisation a charge that hovers, then fastens on default traces to English case law, most notably *Illingworth v. Houldsworth* (also reported as *Re Yorkshire Woolcombers Association*), where the House of Lords set out the features that distinguish a floating charge from a fixed one: it covers a class of assets present and future, that class changes in the ordinary course of the company's business, and the company remains free to deal with it until some event stops that freedom.[5] Indian courts and commentators have absorbed this common law framework wholesale, without a domestic statutory equivalent to anchor it.

What domestic law contributes instead is procedural rather than definitional. Section 77 of the Companies Act, 2013 requires a company to register any charge created on its property or assets, tangible or otherwise, and Section 77(3) bars a liquidator from taking an unregistered

[3] M.L. Abdul Jabbar Sahib v. M.V. Venkata Sastri and Sons, (1969) 1 SCC 573, ¶ 11.
[4] Transfer of Property Act, 1882, § 100; M.L. Abdul Jabbar Sahib, supra note 4, at ¶ 11.
[5] Illingworth v. Houldsworth (Re Yorkshire Woolcombers Ass'n), [1904] A.C. 355 (H.L.) (appeal taken from Eng.).

charge into account at all.[6] Registration, not the Transfer of Property Act, is therefore what gives a floating charge over movables its practical force in an Indian insolvency. The consequence is a genuinely fragmented regime: the Transfer of Property Act supplies the vocabulary of "charge," English common law supplies the mechanics of crystallisation, and the Companies Act supplies the enforcement teeth with no single statute doing the whole job.

CRYSTALLISATION, THIRD PARTIES, AND PRIORITY UNDER SECTION 48

Once crystallised, a charge behaves differently toward outsiders than it did while floating. In *Bank of India v. Agrawal Indotex Ltd.*, the Supreme Court considered what happens when an encumbered corporate asset is sold on to a third party, and held that the purchaser takes the property together with the charge already fastened to it the sale does not wash the security away.[7] A crystallised floating charge, in other words, runs with the asset regardless of whose hands it passes through, which is what makes crystallisation the decisive legal moment in the life of the security.

Priority as between competing charge holders is, in principle, governed by Section 48 of the Transfer of Property Act, which enacts the ordinary equitable rule that whoever's right was created first prevails *qui prior est tempore potior est jure*.[8] The Supreme Court confirmed in *ICICI Bank Ltd. v. Sidco Leathers Ltd.* that this priority does not simply evaporate because the company has gone into liquidation; a first charge holder's right cannot be treated as displaced unless a statute expressly says so.[9] The qualifier in that holding "unless a statute expressly says so" turns out to be the entire story of what happens next.

THE IBC OVERLAY: FROM SECTION 48 PRIORITY TO THE SECTION 53 WATERFALL

The Insolvency and Bankruptcy Code, 2016 is that statute. Its preamble sets out an explicit aim of promoting the availability of credit and rebalancing stakeholder interests, including where the government sits in the repayment queue.[10] Where a secured creditor once looked to Section

[6] Companies Act, 2013, § 77(3), No. 18, Acts of Parliament, 2013 (India); Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd., (2023) 10 SCC 60, ¶¶ 53–54.
[7] Bank of India v. Agrawal Indotex Ltd., (2021) 13 SCC 160, ¶ 8.
[8] Transfer of Property Act, 1882, § 48.
[9] ICICI Bank Ltd. v. Sidco Leathers Ltd., (2006) 10 SCC 452, ¶¶ 20, 48.
[10] Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), pmbl.; Paschimanchal, supra note 7, at ¶ 31.

48 of the Transfer of Property Act for certainty, liquidation now routes that same creditor through Section 53's waterfall, and the two provisions do not describe the same hierarchy.

The disruption begins earlier than liquidation, at the moment insolvency proceedings open. Section 14 imposes a moratorium the instant the corporate insolvency resolution process is admitted, freezing any action to foreclose, recover, or enforce a security interest against the corporate debtor.[11] A secured creditor holding a fully crystallised charge otherwise entitled to enforce it immediately simply cannot act for as long as the moratorium runs.

If resolution fails and the company slides into liquidation, Section 52 forces a binary choice on the secured creditor: relinquish the security to the liquidation estate, which buys a high-ranking place in the Section 53 waterfall roughly level with workmen's dues, or realise the security independently, outside the collective process.[12] The second option carries a penalty most creditors will not have anticipated when the loan was written: under Section 53(1)(e)(ii), any shortfall left after independent realisation ranks alongside unpaid government dues, below the claims of unsecured financial creditors.[13] The Supreme Court in *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd.* was direct about the scale of this override, holding that Section 53(1) governs notwithstanding anything to the contrary elsewhere in law, and that even a secured creditor's rights to enforce, realise, or compromise its security are correspondingly diluted.[14] A right that looked absolute under Section 48 turns out, at the point that matters most, to be conditional on a choice the Code itself designs to be unattractive either way.

STATUTORY CHARGES AND THE GOVERNMENT DUES PROBLEM

A further complication concerns charges that arise not from contract but from statute most often tax dues secured in the government's favour by operation of law. In *State Tax Officer (1) v. Rainbow Papers Ltd.*, the Supreme Court read the definition of "security interest" under Section 3(31) of the Code broadly enough to capture a statutory charge held by a state tax department, effectively placing government dues on the same footing as a contractually created security interest.[15] That reading sat uneasily with the Code's own architecture, which elsewhere

[11] Insolvency and Bankruptcy Code, 2016, § 14.
[12] Insolvency and Bankruptcy Code, 2016, § 52; Paschimanchal, supra note 7, at ¶ 26, ¶ 33(6).
[13] Insolvency and Bankruptcy Code, 2016, § 53(1)(e)(ii).
[14] Paschimanchal, supra note 7, at ¶¶ 26, 69.
[15] State Tax Officer (1) v. Rainbow Papers Ltd., (2023) 9 SCC 545, ¶¶ 27, 29.

treats government dues as a distinctly lower priority than secured commercial debt.

Paschimanchal narrowed the point considerably. The Court there held that Section 53 deliberately ranks government dues below the claims of secured and unsecured financial creditors, and declined to let *Rainbow Papers* stand for the broader proposition that a statutory charge automatically enjoys parity with a contractual one.[16] The result is a live and only partially resolved tension: whether a charge's statutory origin should affect its ranking survives as an open question the two decisions answer differently depending on how each frames "security interest" under Section 3(31).

WHY THE CURRENT FRAMEWORK IS INADEQUATE

Three structural problems run through all of the above. First, the Transfer of Property Act's silence on movable property means the entire architecture of a modern floating charge is built on borrowed common law and Companies Act registration machinery rather than a coherent domestic statute workable in practice, but without the predictability a codified rule would give secured lenders. Second, Section 53's ranking of relinquished versus independently realised security creates an asymmetry that punishes a creditor for exercising the very right the Transfer of Property Act otherwise protects; a shortfall from independent realisation is treated worse than the same shortfall would be if the creditor had simply handed the asset to the liquidator. Third, the boundary between contractual and statutory security interests remains genuinely unsettled after *Rainbow Papers* and *Paschimanchal*, leaving lenders unable to price the risk that a government charge might unexpectedly rank alongside their own.

None of this is accidental. The Bankruptcy Law Reforms Committee designed the Section 53 hierarchy deliberately, to push secured creditors toward collective realisation and to protect the interests of unsecured lenders and employees.[17] That policy choice is defensible in its own terms. But it was made without amending the Transfer of Property Act to match, so a creditor's rights now depend on which statute a court reaches for the older property statute or the newer insolvency code rather than on a single settled rule.

[16] Paschimanchal, supra note 7, at ¶¶ 44, 50.

[17] Bankruptcy Law Reforms Committee, The Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design (2015); Paschimanchal, supra note 7, at ¶ 29.

PROPOSED REFORM

Three changes would narrow this gap without abandoning the Code's collective-action goals.

First, floating charges and their crystallisation triggers should be defined in statute rather than left to contract and imported common law. Amending the Transfer of Property Act or, more realistically, the Companies Act, 2013 to specify standard triggering events (appointment of a receiver, admission of an insolvency petition, a defined default notice) would give secured lenders the predictability that Section 100's silence currently denies them.

Second, the Code should specify how priority operates within the relinquished-security tier under Section 53(1)(b)(ii). At present that tier treats all relinquishing secured creditors alike; requiring distribution within it to follow each creditor's registered priority under Section 77 of the Companies Act would preserve the *ICICI Bank v. Sidco Leathers* principle of first-in-time priority inside the collective process, rather than discarding it.

Third, the penalty attached to independent realisation under Section 53(1)(e)(ii) should be softened. Ranking an unrecovered secured shortfall pari passu with unsecured financial debt under Section 53(1)(d), rather than alongside government dues, would remove the current disincentive against a creditor exercising rights the Transfer of Property Act otherwise guarantees it, while leaving the broader relinquish-or-realise structure intact.

CONCLUSION

A charge under the Transfer of Property Act, a floating charge shaped by borrowed common law, a registration requirement under the Companies Act, and a distribution waterfall under the Code are, at present, four separate regimes doing one job badly rather than one regime doing it well. Each has grown up answering a different question what a charge is, when it crystallises, how it is registered, how it is paid out without much coordination between them. Bringing the Transfer of Property Act and the Insolvency and Bankruptcy Code into closer alignment would not undo the policy choices behind the 2016 Code; it would simply let secured lenders know, before they lend, what their security is actually worth if the borrower fails.

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