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Rata - Newsletter

15th October 2017 | **Issue 46**

(For Private Circulation Only)



INSOLVENCY & BANKRUPTCY CODE

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Contents

Overview Of RATA

The Refrigeration & Air-Conditioning Trades Association Ltd. (RATA) is one of the oldest association working for the development of Air-Conditioning & Refrigeration industry in India. Established in the year 1949, the association brings together people from the entire industry and gives them a central forum to help them accomplish their common goal of making progress and achieving success. To bring this vision to reality, RATA with its base of ethics and a strong code of conduct, actively and responsibly helps its members to grow and has also encouraged new entries for the expansion and betterment of the industry. RATA believes in providing a platform to its members to showcase their offerings which in turn will promote internal as well as external trade. In this constantly evolving industry and changing market trends, the association contributes towards the promotion and an overall development of its members and the industry by encompassing companies and traders to organize promotional, educative and informative events.

Details of Committee Members of Year 2017-2020

Name Of Member	Name Of Company	Post
Mr. Ajit Panicker	NOVA HVAC SYSTEMS (INDIA) PVT LTD.	Hon. President
Mr. Mihir Sanghavi	Auro Engineering Company	Hon. Secretary
Mr. Jasprit Singh	H. J. International	Hon. Jt. Secretary
Mr. Akash Varma	Ishwar Trading	Hon. Treasurer
Mr. Parasmal Sirohia	Cruise Appliances (I) Pvt Ltd	Immediate Past President
Mr. Pankaj Choraria	Boulton Trading Corporation	Committee Member
Mr. Hitendra Morakia	Industrial Metals	Committee Member
Mr. Pritesh Shah	Filko Enggineering Co	Committee Member
Mr. Harshal Padia	T J Controls	Committee Member
Mr. Nasir Khan	Airofrost HVAC Systems Pvt Ltd	Committee Member
Mrs Subha Prasannan	Anshutech Airconditioning Pvt Ltd	Committee Member
Mr Rajendra Joshi	Arkk Consulting	Committee Member
Mr Amod Dikshit	Dikshit Consultants & Engineers Pvt Ltd	Committee Member
Mr. Rajen Bhimra	Bhimra Products	Action Committee
Mr Bhavesh Mehta	Mr Bhavesh Mehta	Action Committee
Mr Harshal Ganjawalla	Ganjawala Fabripro Pvt Ltd	Action Committee

Content

05, 07 & 08 Bankruptcy & Insolvency Code

Edited & Complied: Ajit Panicker, President RATA, ap@novainitiative.com

Administrative Support : Ms Rinal Vira, info@rataindia.com

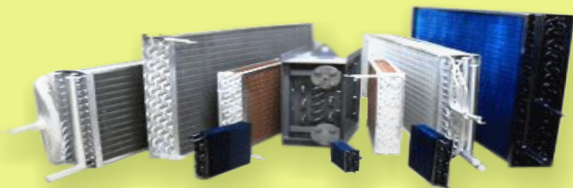
Circulation: Monthly to every member randomly every quarter to non members reaching over 5000+ small and medium enterprises in the field of airconditioning and refrigeration.

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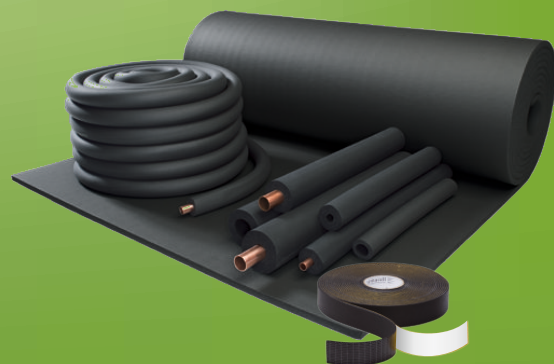


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Insolvency & Bankruptcy Code

Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) is a uniform code to consolidate and amend the laws relating to Insolvency and bankruptcy in India. Earlier bankruptcy laws such as Presidency Towns Insolvency Act, Sick Industrial Companies Act etc are repealed by IBC.



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The IBC applies to companies, limited liability partnerships (LLP's), partnership firms and individuals. The attractive feature of this code is that it seeks to complete the entire insolvency resolution process in a time bound manner of 180 days which can be extended to 270 days at the discretion of the relevant adjudicating authority.

Overview

- The Insolvency and Bankruptcy Board of India (IBBI) is the regulator to oversee and regulate the entire insolvency process.
- The National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) are the adjudicating authorities for companies and LLPs. The Debt Recovery Tribunal (DRT) and Debt Recovery Appellate Tribunal (DRAT) are the adjudicating authorities for individuals and partnership firms.
- To file an insolvency petition under IBC, the minimum amount of defaulted debt is Rs 1000/- for individuals and partnership firms and Rs 1,00,000/- for companies and LLP's.

Key Points

- To bring an action under the IBC, the default should be in relation to a financial debt or operational debt. A financial debt includes loans, debentures, derivative instruments, etc. An operational debt includes a claim in relation to the provision of goods and services. For an operational debt, a demand notice of 10 days must be served on the debtor before an application is filed with the NCLT. Further, for an operational debt there should not be a dispute on the debt which exists prior to receipt of the demand notice.

Continued on Pg. 5



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- NCLT is given 14 days to admit or reject an application. This period has been held to be directory and not mandatory. Once the NCLT admits the insolvency application, it declares a moratorium period of 180 days whereby no action under any pending suit can be taken against the debtor or its assets and no fresh proceedings against the debtor can be initiated during such period.
- Once the insolvency application is admitted, the board of directors of the corporate debtor are suspended and an interim resolution professional (IRP) is appointed to exercise control over the management of the debtor company. The IRP is given powers to manage the company during the insolvency resolution process.
- The IRP collects claims against the corporate debtor and thereafter constitutes a committee of the financial creditors to take decisions regarding the recovery of debt.
- After the constitution of the committee of creditors, the IRP invites offers so as to prepare an insolvency resolution plan. The resolution plan must be approved by the committee of creditors and thereafter by the NCLT. Approval by the committee of creditors requires a 75% majority vote. Once the resolution plan is approved by the committee of creditors, it is submitted to the NCLT for its approval. If approved, the resolution plan binds all stakeholders in the company / debtor including the creditors.
- Failure to approve resolution plan results in liquidation of the debtor company.
- The proceeds of the liquidation must first be used to meet costs of the insolvency resolution process and the costs of liquidation. To protect the interest of the all the stakeholders, the workmen dues and dues of secured creditors are to be paid in preference to the government dues and unsecured creditors' dues.
- Appeals from the decision of the NCLT lies to the NCLAT and must be filed within 30 days of the NCLT order (with provision for a further 15 days at the discretion of NCLAT). Appeals from the decision of NCLAT on questions of law lie to the Supreme Court and must be filed within 45 days of the NCLAT order (with provision for a further 15 days at the discretion of the Supreme Court).

Continued on Pg. 8

Dealers of



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Insolvency & Bankruptcy Code

Important Judgements

- An advocate cannot send a demand notice or file an application for insolvency resolution process under IBC on behalf of its client. Only an authorised person holding a position in the creditor company can send such notice/file such application with NCLT.
- A guarantor can invoke insolvency proceedings against a debtor and insolvency proceedings can be invoked against a guarantor as well for default in repayment of the debt.
- Limitation period for filing insolvency proceedings will commence from the date of enactment of the IBC i.e. 1 December 2016. The issue of whether the law of limitation will apply to proceedings under the IBC has been left open by the Supreme Court.
- There is some confusion on whether a matter before the NCLT can be withdrawn once it is admitted, if the parties have reached a settlement. The Supreme Court exercised its extraordinary jurisdiction under Article 142 of the Constitution to permit such a withdrawal. Since the IBC is silent on this issue, the matter has been referred by the Supreme Court to the Central Government to take necessary action in this regard.

Conclusion

- The IBC is a welcome legislation as it provides a single forum and standard procedures to be followed for insolvency and bankruptcy processes.
- The IBC gives control to creditors to recover their debts through an insolvency resolution professional.
- The IBC is an evolving law with new and interesting judgements almost every day regarding questions of law and procedural aspects.

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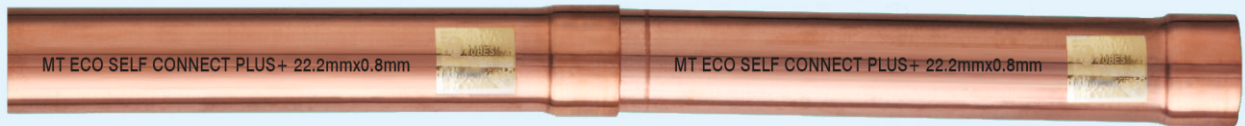
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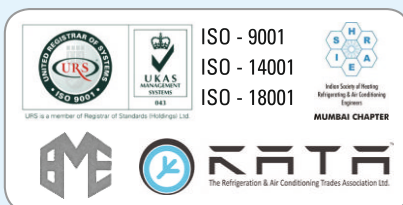
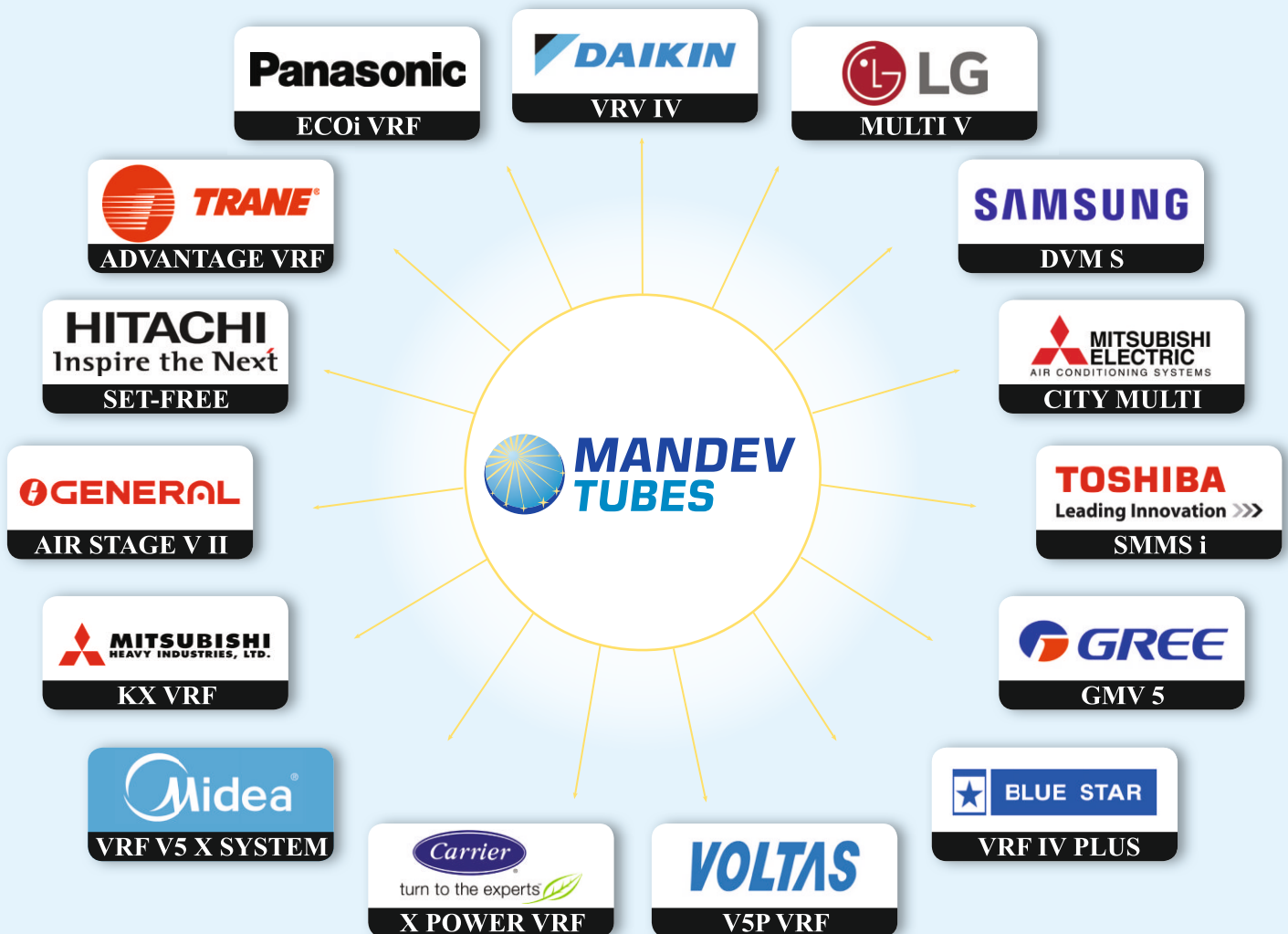
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