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Monthly TARIFF for advertisement in Focus:

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<thead>
<tr>
<th>Type</th>
<th>Size</th>
<th>Employment</th>
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<tr>
<td>Back Inner Cover Page</td>
<td>18 x 18</td>
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*Service tax and other applicable taxes, if any, extra

Annual Contract:
(1) Out of 12 issues you have to remit only 10 issue charges, i.e. 2 issues will be free.
(2) *For Principle Sponsorship: Out of 12 issues you have to remit only 9 issue charges (i.e. 3 issues will be free) – INR 9,00,000.

Half Yearly Contract:
(1) Out of 6 issues you have to remit only 5 issue charges, i.e. 1 issue will be free.
(2) *For principle Sponsorship: Out of 6 issues you have to remit only 5 issue charges, i.e. 1 issue will be free.

Term of Payment: Advance Payment in favour of 'WIRC of ICSI' by way of a Cheque/Demand Draft
Dear Colleagues,

Greetings from ICSI-WIRC,

It has been half way through since I took charge of the Council of Western Region as its Chairman and during this six months we have seen lot of challenges, yet having the contentment of doing some to the profession. The months of April and May were full of activities and brain storming sessions, needless to add there are lots of work which is in progress for the forthcoming Annual Regional Conference which is planned in Indore, the financial Capital of the state of Madhya Pradesh.

Let me quickly run through the programmes organized by the month of April 2016. We started our journey with a programme in Gwalior on April 10, 2016 which was attended by regulators as our resource persons. Further during the last week of April we witnessed excellent and maiden Corporate Law summit. The PCS Study circle which was commenced earlier this year is also going on well.

April is generally said to be a slow month but in the case of ICSI-WIRC it was different. The WIRC and all its chapters organized ever so many programmes and it gives me a great sense of satisfaction that the participation in these events were also excellent.

May I request all members of our region, particularly the new members to join the CSBF and take the benefit of the Benevolent fund.

Professionally Yours

April 1, 2016
Indore

CS Kamlesh Joshi
Chairman-WIRC of the ICSI
Are you a Sick Unit in the State of Maharashtra ???

With the promulgation of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (SARFAESI Act, 2002) the Banks and the Financial Institutions have been given enormous power to recover their money from the defaulting Companies by selling their Assets, secured with the Banks, in a speedier manner. Before the advent of the SARFAESI Act, 2002, it was very difficult for the Banks and Financial Institutions to recover their money from the Companies as the Companies resorted to the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA, 1985). SICA was promulgated to revive and rehabilitate an Industrial Company and largely had prevention of unemployment as its objective. An Industrial Company having referred to the BIFR under section 15 of SICA, could get immunity from Suits, Legal Proceedings and imposing agreements u/s 22 of SICA. This largely prevented Banks from resorting to legal actions such as Winding up under the Companies Act and recovery of dues under The Recovery of Debts due to the Banks and Financial Institutions Act, 1993 (RRDB Act).

Although, both the Acts i.e. RDDB and SICA have “non obstante clauses” in section 34 and 32 in the respective Acts, the Courts have time and again ruled that SICA has an overriding effect on RDDB as section 34(2) of RDDB itself mentions that “The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of SICA”. All the issues were put to rest by the Supreme Court in its landmark judgment in the matter of KSL & Industries Ltd v/s M/S Arihant Threads Ltd. & Ors in October, 2014 where it expressly ruled that SICA overrides RDDB.

However, such a protection under section 22 of the Act is not available from the action under SARFAESI by the Banks and the Financial institutions as section 35 of SARFAESI contains a “non obstante clause” and SARFAESI being a latter Act, overrides BIFR. Under SARFAESI, the authorized officer of the Secured Creditor has been empowered to take the possession (symbolic or physical) of the assets of the defaulting Company. In this context, the Companies feel handicap and do not know what to resort to against the legal action under SARFAESI which could endanger the dispossession and subsequent sale of their Assets to the Banks. Under such circumstances, if there is one remedy for the Companies to save their Assets from being possessed by the Banks and Financial Institutions and sold then it is the “Maharashtra Relief Undertakings (Special Provisions) Act, 1985” (MRU). This topic could be dealt with as under:

1. What is MRU?

The MRU (Special Provisions Act), 1958 is a State Legislation which was promulgated way back in 1958 and had received the assent of the President which was first published in Bombay Government Gazette, Part IV on 2nd December, 1958. The Act was adapted and modified by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960 and was amended from time to time in the year 1964, 1969 and 2012. The short title was amended to “Maharashtra Relief Undertakings (Special Provisions) Act” for the short title “the Bombay Relief Undertakings (Special Provisions) Act, 1958 w.e.f. 1-5-1960.

2. Objective of the MRU:

The main objective of MRU is to provide relief to the Industrial undertakings by making temporary provisions in terms of providing Loans and/or guarantee and/or financial assistance to the Industrial Undertakings and thereby preventing unemployment.
3. **Eligibility for MRU:**

The aspiring Undertaking has to be an Industrial Undertaking as defined under Section 2(1) of the MRU Act, which states that “industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or vocation of workmen, and the word "industrial" shall be construed accordingly”; for being eligible to apply under the MRU Act.

Secondly as per Section 3 of the MRU Act, only such Industrial Company can apply under the said Act, which:

- is started, acquired or otherwise taken over by the State Government,
- is carried on or proposed to be carried on by State Government or under its authority,
- has received any loan, guarantee or other financial assistance has been provided by the State Government

Amongst the other requirements as pointed above, the term “Financial Assistance” can be widely construed and can include deferral sales tax incentive, Value Added Tax, Non payment of Provident Fund and such other liabilities towards State Government which are due to be paid by the Company to the State Government. One such example can be found in the case of “ICICI Bank Limited v/s the State of Gujarat, 2000” wherein The State Government had given cash subsidy of Rs.15 lacs to the Gujarat Telephone Cables Ltd, respondent Company therein. The State Government had also given Sales Tax deferment to the tune of Rs.19.06 crores to the respondent Company and the State had further granted benefit of Sales Tax exemption to the tune of Rs.54.61 crores to another unit of the respondent Company. In view of such financial assistance given by the State Government to the respondent Company the provisions of the BRU Act are applicable to the respondent Company as the State Government is interested in survival and growth of the respondent Company.

Thirdly, only an Industrial Undertaking having its Unit situated in Maharashtra and Gujarat can apply under MRU. For the rest of the States, like MRU there is a corresponding legislation respectively for example KRU in Karnataka, RRU in Rajasthan, WBRU in West Bengal, ORU in Orissa.

4. **Procedure under MRU:**

Unlike under other Acts, MRU does not have any pre defined form under which the an Industrial Undertaking can apply. This is probably because an application is not to be made to a Judicial or Quasi Judicial Body but a department of the Government i.e. the Industries, Energy and Labour Department (IEL).

Under MRU, the aspirant undertaking can fill up a “21 points Questionnaire” and submit the same on the letter head of the Company along with the necessary annexures with the IEL Department. The questions asked in the said Questionnaire inter –alia includes details like:

- Brief Background of the Company and its Subsidiaries and if the Company has been taken over, constitutional documents of the Company and Annual Accounts of last 3 years of the Company.
- Details of location of the Factory of the Company
- Business of the Company and nature of existing operations
- If the Company has become Sick and if it is already registered with BIFR, details about rehabilitation package submitted with BIFR, if any and Banks’ agreement thereon
- Details of Workers of the Company and payment of wages to them
- Total liabilities of the Company and provision of payments, if any made for the Secured and the Unsecured Creditors
- Eligibility of the Company to apply u/s 3 of MRU and the reasons thereof.

The said application is processed in the IEL Department and the same is forwarded with comments to the Inspection Department of the office of Directorate of Industries for further processing. The said Inspection Department is responsible for technical and in depth scrutiny of the Application.

With the simultaneous scrutiny at the Inspection Department, a physical inspection is ordered...
of all the factory premises of the Industrial Undertaking and the Undertaking is ordered to answer 16 questions with respect to each of the factory premise and the replies have to be prepared in the same manner as the initial application and to be submitted with the Inspection Department this time.

As the scrutiny advances, the points raised by the Inspection Department are to be answered by the Industrial Undertaking as and when asked for and finally a convincing “three point reply” has to be submitted with the Inspection Department which substantially includes the future prospects of the Industrial Undertaking and the repayment plan of the Company and why the Industrial Undertaking feels it should be declared as a “Relief Undertaking”

If the Inspection Department is satisfied and convinced about information submitted by the Undertaking, it issues a positive report and vice versa, which is signed by the Commissioner and the report goes to the IEL Department for their further action.

The negative report of the Inspection Department suggests that if the Undertaking is declared as a Relief Undertaking then the purpose of MRU would not be served and the objective will not be substantially achieved or may be it would not be in the larger public interest and the Undertaking is accordingly intimated about the same.

If the report is positive then a Notification is prepared which covers the entire details about the said application and the immunity which the Undertaking would get and the same is put up for the signatures of the Deputy Secretary, the Secretary of the IEL Department and finally by the Hon. Minister of the Ministry of Industries.
Ø Once signed by the Hon. Minister, the Notification goes to the Law and Judiciary Department and gets notified in the Gazette of the State.

5. Why MRU?

SICA may have lost its teeth vis -à-vis SARFAESI but MRU is certainly here to give shelter to the Companies who have defaulted in repayment of Loans to the Banks and Financial Institutions.

Section 4 of MRU clearly spells that it has an overriding effect over other laws and also mentions few Central legislations in the Schedule thereunder which includes laws like The Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act amongst other State specific Laws.

But the clinical overriding effect comes from the wordings of Section 4(1)(a)(iv) of the MRU Act which spells out as under:

“any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal officer or authority shall be stayed”

In this context, there is a debate as to which act would override the other whether SARFAESI or MRU as both the Acts have “ non obstante clauses” but there is clarity that the while SARFAESI is a later act and should prevail over other Acts, the power given by Section 4(1)(a)(iv) under MRU cannot be ruled out either as after all the State Law was enacted to prevent unemployment and also would also have priority over the debts of the Bankers and other Secured Creditors and the Courts across India have considered this fact and notified Undertakings as Relief Undertakings thereby also immuning them from the action from Bank under SARFAESI.

While there is no express judgment over the superseding power of on Act over other, the intention of the legislature conjoined with the decisions of the judiciary has to be well appreciated and inferred that MRU and other such State specific Relief Acts as powerful than SARFAESI.

Also, the Constitutional validity of MRU and respective State Relief Acts have been questioned before various Courts across India, but the same has been upheld by the Courts time and again
with the recent example being that in the matter of “Mr. Laxmidas Thakker v/s The State Government of Maharashtra” in the year 2012.

Another reason why MRU is lucrative is that it provides relief for 12 months from the date of the Notification and is also be renewed for 15 years year after year. This gives the Company ample time to re build itself and pay off the debts of the Company.

However, the Ministry has to be extremely careful and vigilant while declaring an Industrial Undertaking as a Relief Undertaking as it involves substantial Public Interest involved.

6. The Current Scenario:
As mentioned in the preceding paragraph, there is a lot of debate over the superseding power of SARFAESI and MRU and the Banks and the Financial Institutions are unhappy over the relief provided to the Undertakings from SARFAESI as the SARFAESI Act, 2002 was formed so as to give undisputable powers to the Bankers and the FI’s so as to enforce their claims against the defaulting Companies.

In absence of clarity under the Laws and no judicial pronouncement by the Apex Court over this issue, the Ministry is facing extreme pressure from the Banks to consider the fact that the Banks lending involves public money and giving relief to the Companies would mean endangering public Interest. The Ministry was also reprimanded and lamented by the Mumbai High Court for recklessly issuing notifications to Undertakings.

This has alerted the Ministry and the Inspection Department has been set up for the very purpose of tightening the screws.

To put rest to the debate over the overriding powers of SARFAESI and MRU, the Ministry had recently requested the Attorney General of the State of Maharashtra to issue a report as an observation and guide the Ministry in this issue.

The report of the Attorney General is out recently and is believed to be positive for issuing Notifications to the eligible Undertakings.

This has brought cheer once again amongst the Industries but they have to be really careful now as it is not going to be any cake walk now with the Ministry water tightening its procedure.

7. Conclusion:
All in all, MRU has been, is and is going to be extremely crucial in terms of reviving Industries in the State and preventing unemployment.

The relief under MRU or any other State Relief Act should not be denied solely due to the reason that there is dilemma over the overriding effect of SARFAESI and MRU. The applications of the eligible Undertakings must be processed and the Relief must be granted after following due procedure and if the respective State Government feels that the objectives of the Act are getting achieved.

The interpretation as to the supersession of provisions of the Acts shall be left to the wisdom and discretion of the Judiciary.

However, the noble thought of welfare of the people of the State along with the Industries has to be blended with a lot of caution by the respective State Governments as not all the Industries come with “Clean Hands”
The Service sector contributes more than 50% of the GDP (Gross Domestic Product) of the country. Hence, it plays a vital role in the economy of the country. For the manufacturing sector, it affects the cost of products. Therefore, it becomes necessary to understand the correct meaning of Input Services in context to remove the cascading effect of Double Taxation, so as to arrive at a neutralized cost of production removing the effect of double taxation. In this analysis, we shall take a detailed view on the definition of “Input Services” to derive more clarity on the subject.

**A) DEFINITION:**

Rule 2(l) – Cenvat Credit Rules, 2004

“Input Service” means any service,  
(i) used by a provider of output service for providing an output service; or  
(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

but excludes –

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for –  
(a) construction or execution of works contract of a building or a civil structure or a part thereof; or  
(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or  

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or  

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by –  
(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or  
(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or  

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee.
[Explanation – For the purpose of this clause, sales promotion includes services by way of
sale of dutiable goods on commission basis.]

(B) ANALYSIS:

The definition of “input service” is broad and can be categorized in three parts
– First is main part, second is inclusive part and the third part covers exclusions.

(a) Main part:

First part i.e. the main part of the definition is restrictive in scope as it covers input services used for providing taxable output service or used by manufacturer, directly or indirectly, in relation to manufacture or clearance of final product up to the place of removal.

(b) Inclusions:

(i) Meaning of “includes”

The inclusive part of the definition expands the scope of the definition. It covers input services used “in relation to” various activities for which CENVAT credit may be availed. An illustrative list is listed as below

<table>
<thead>
<tr>
<th>Sr. #</th>
<th>Services</th>
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<tbody>
<tr>
<td>1</td>
<td>Modernisation, renovation or repairs of a factory, premises of provider of output service, or an office relating to such factory or premises. (Wherein such goods/services are produced).</td>
</tr>
<tr>
<td>2</td>
<td>Advertisement or Sales Promotion (expressly includes services by way of sale of dutiable goods on commission basis)</td>
</tr>
<tr>
<td>3</td>
<td>Market Research</td>
</tr>
<tr>
<td>4</td>
<td>Storage up to the place of removal.</td>
</tr>
<tr>
<td>5</td>
<td>Procurement of Inputs.</td>
</tr>
<tr>
<td>6</td>
<td>Accounting</td>
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<tr>
<td>7</td>
<td>Auditing</td>
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<tr>
<td>8</td>
<td>Financing</td>
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<td>9</td>
<td>Recruitment</td>
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<td>10</td>
<td>Quality Control</td>
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<tr>
<td>11</td>
<td>Coaching and Training</td>
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<tr>
<td>12</td>
<td>Computer Networking</td>
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<tr>
<td>13</td>
<td>Credit Rating</td>
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<td>14</td>
<td>Share Registry</td>
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<tr>
<td>15</td>
<td>Security</td>
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<tr>
<td>16</td>
<td>Business Exhibition</td>
</tr>
<tr>
<td>17</td>
<td>Legal Services</td>
</tr>
<tr>
<td>18</td>
<td>Inward transportation of inputs or capital goods</td>
</tr>
<tr>
<td>19</td>
<td>Outward transportation up to the place of removal</td>
</tr>
</tbody>
</table>

Here it is to be noted that this is just an illustrative list and hence the input services are not restricted to this list only.

(ii) Meaning of “in relation to” :-
The expression “in relation to” (so as ‘pertaining to’) is an expression of expansion and not of contraction, which might both have a direct significance as well as an indirect significance depending on the context. They are not words of restrictive content.

(iii) Place of Removal :-

The concept of ‘removal’ is borrowed from Central Excise and hence applies only to a manufacturer and not a service provider.

According to Section 4(3)(c) of the Central Excise Act, “Place of Removal” means

i. a factory or any other place or premises of production or manufacture of the excisable goods;

ii. a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without the payment of duty;

iii. a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory.

from where such goods are removed.

Interpretation in simplified terms.
Place of Removal simply means the place from where such goods are removed for sale. It may be a factory, or a warehouse, or a depot, or premises of a consignment agent or any other place as well.

Availment of Cenvat Credit
It has been held by the Tribunal in DSCL Sugar v. CCE (2012) STT that “upto place of removal” would include “at the place of removal”. Therefore, Cenvat Credit would be available for input services upto the place of removal.

Port is place of removal in case of exports
Goods cleared by Manufacturer Exporter:
- Transfer of property takes place when goods are handed over to the shipping line. In that case, port/ICD/CFS will be the place of removal.

Export through Merchant Exporter:
- The place of removal shall be the factory gate, however, in isolated cases; the port/ICD/CFS can be the place of removal depending on the facts of the case.

[Vide CBE & C circular No. 999/6/2015-CX dated 28.02.2015]

(c) Exclusions:
The definition specifically excludes certain goods/services for which CENVAT credit cannot be availed. The exclusive or negative part is further bifurcated in four clauses, (A), (B), (BA) and (C). These services would not be eligible even if these would be eligible as per inclusive part of the definition of “input service”.

(i) Services specifically excluded under clause (A)
Following services have been specifically excluded from the definition of “Input Services” (referred to as “specified services”)

(A) Service portion in the execution of –
(a) Works Contract
(b) Construction Services
(c) Services under Section 66E(b) of the Finance Act.
### List of Services under Section 66E(b)

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<tr>
<th>Sr. #</th>
<th>Services</th>
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<tbody>
<tr>
<td>1</td>
<td>Construction of A Complex Building</td>
</tr>
<tr>
<td>2</td>
<td>Building</td>
</tr>
<tr>
<td>3</td>
<td>Civil Structure or part thereof</td>
</tr>
<tr>
<td>4</td>
<td>A complex or building intended for sale, wholly or partly</td>
</tr>
</tbody>
</table>

if they [i.e (i) -- (a), (b) & (c) above] are used for –

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods.

**Exclusions in “exclusions”:**

(i) These “specified services” listed above, will be eligible for Cenvat Credit only if used for any these “specified services”. For example service portion in execution of a works contract and construction services (specified services) will be eligible as input service if used for Construction service or Works Contract Service.

(ii) A complex or building intended for sale to a buyer, wholly or partly, shall be a service except if the entire consideration is received after issuance of completion certificate by the Competent Authority.

A. “Competent Authority” for this purpose shall mean –

a) An Architect registered with the Council of Architecture constituted under the Architects Act, 1972

b) Chartered Engineer registered with the Institution of Engineers (India)

c) Licensed surveyor of the respective local body of the city or town or village or development or planning authority.

B. “Construction” includes

- Additions
- Alterations
- Replacements or
- Remodeling

of any existing civil structure

(iii) Input Services used in relation to structural components, which are essential parts of equipment/machinery will be eligible for Cenvat Credit.

(ii) **Services specifically excluded under clause (B):**

Services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle, which is not a capital goods.

However, these services will be eligible as “input services” if used for provision of taxable services for which Cenvat Credit of Motor Vehicle is available as Capital Goods.

(iii) **Services specifically excluded under clause (BA):**

Following services shall not be eligible as “input services”, if they relate to a motor vehicle, which is not a capital goods;

Service of -

(a) General Insurance Business
(b) Servicing
(c) Repair & Maintenance
Exclusions in “exclusions”:
The services listed above, shall be eligible as “input service” only to the following:

a) Where motor vehicle is eligible as Capital Goods.
b) Where such service is used by a Manufacturer of motor vehicle in respect of vehicles manufactured by him.
c) Where such service is used by General Insurance Company in respect of vehicles insured or re-insured by them.

(iv) Services specifically excluded under clause (C):
Certain services are specifically excluded under this sub-clause only when such services are used primarily for personal use or consumption of any employee. These services are as follows:

a. Outdoor catering
b. Beauty treatment
c. Health services
d. Cosmetic and plastic surgery
e. Membership of a club
f. Health and fitness centre
g. Life insurance
h. Health insurance
i. Travel benefits extended to employees on vacation such as Leave or Home Travel concession.

Exclusions in “Exclusions” - Examples
(i) Outdoor catering for “sales promotions” would be eligible, even if some employees attend lunch/dinner, since it is not primarily for personal use or consumption of employees.
(ii) Mobile phones to employees mainly for business purposes should be eligible even if incidentally used for personal purposes.
(iii) Club membership fee of a director (who is not employee) would be eligible. Corporate club membership (without naming any specific employee) should be eligible.

# Here it should be noted that these examples are provided just for an understanding and should not be considered as a restricted list.

(C) CENVAT CREDIT:

(a) Time – Limit of availment of Cenvat Credit: -
The manufacturer or the service provider shall avail Cenvat credit within one year from the date of issue of invoice, bill or challan as the case may be. Cenvat Credit is not allowed to be taken after the expiry of the aforesaid period of one year.

[Fifth proviso to Rule 4(7) of the Cenvat Credit Rules, 2004 w.e.f. 01.03.2015]

(b) Cenvat Credit of Input Service on receipt of invoice of Service Provider:-
The Service tax is payable on accrual basis (w.e.f. 01.04.2011). Hence, Rule 4(7) of the Cenvat Credit Rules, 2004 provides that Cenvat Credit shall be allowed on or after the day on which invoice, bill or challan of the service provider is received.

(c) Reversal of Cenvat Credit, if payment not made within 3 months: -

(i) If payment of value of service and tax thereon is not made to the service provider within three months from the date of invoice/bill/challan, the Cenvat Credit so taken shall be reversed by paying an amount equal to the Cenvat credit availed.
(ii) However, if at a later date (i.e. after 3 months) the said payment is made to the service provider, the amount equal to the reversed Cenvat Credit can be taken as credit again.  
[Second proviso to Rule 4(7) of Cenvat Credit Rules, 2004 w.e.f. 01.04.2015]

(d) Reversal of Cenvat Credit - If Amount refunded or credit note issued by Service Provider :-
In the event, the amount of invoice is re-negotiated due to deficiency in service, or for any other reason, and the service provider either refunds the amount or issues a credit note, then the service receiver, who had taken the Cenvat credit on the original invoice amount shall reverse the Cenvat Credit availed equal to the amount so refunded/credit note issued.  
[Third proviso to Rule 4(7) of the Cenvat Credit Rules, 2004]

(e) Cenvat Credit – Under Reverse Charge Mechanism :-
In cases, where the service tax amount, partially or fully, is payable by the Service Recipient under the Reverse Charge Mechanism (i.e. where 100% tax liability is of the service recipient or he is liable to pay part of the service tax amount), the service recipient is required to pay service tax of his portion by cash through either GAR-7 challan or Internet.  
[Explanation to Rule 3(4) of the Cenvat Credit Rules, 2004]

After making payment of above-said service tax by the Service Recipient, he can avail the Cenvat Credit of that service tax within one year from the date of payment by GAR-7 challan/Internet, even when the payment of value of service is not made to the service provider within the specified period of three months.  
[First and Second proviso to Rule 4(7) of the Cenvat Credit Rules, 2004 w.e.f. 01.04.2015]

(D) RECOMMENDATION:
It is advisable to take full Cenvat Credit only after payment is made to the service provider to avoid the jugglery of three months.
Prof. TechLaw in conversation with a Corporate Executive

On how Computers and the Internet present new legal challenges to Company Executives

Company Executive: Prof TechLaw, I just heard you speak at the Computer Society of India. You talked about the law not keeping pace with technology advances. Kindly elucidate.

Prof TechLaw: Technology gallops and the law follows at a slow pace. That is rightly so. Technology does what technology can. But the law is concerned with rights, duties, remedies. And the law must understand and support technology advances especially to benefit people like you who use computers and the Internet extensively at work.

Company Executive: Why don’t we simply leave those things to the lawyers? Only they can understand the complexities of any laws.

Prof TechLaw: Leaving things to your lawyer has at least 3 big drawbacks. Firstly, unless you know something about technology law issues, you may not know when to approach a lawyer. And when you finally do, the damage may have been done already.

Company Executive: Please give me an example I can understand.

Prof TechLaw: That is easy. For example, you have a privacy policy that you think protects your interests. But assume that there are changes in the way you deal with the personal information of your clients. Perhaps something simple - like using a vendor to handle some matters, instead of doing it in-house. Your lawyer does not know about such changes; and you don’t know its legal implications. This could harm your interests especially, in the light of the important additions to the Information Technology Act - on privacy issues. Such situations can lead to serious legal problems.

Company Executive: But such things happen all the time. How is it different with regard to the use of the Internet as compared to things we do in an off-line mode?

Prof TechLaw: The use of the Internet does 3 significant things that add to risks: a. It automates business transactions, so there are more transactions then ever before. Many of them without any human involvement!
b. There are dealings with more "unknown" people than ever before. That opens up new risks and issues that we never faced before the advent of the Internet.

c. It increases the speed or velocity of business; therefore retracting offers or correspondence can be virtually impossible. For example, you have made an offer at great discounts on your website, and before you have noted a serious flaw, you receive more than 15000 orders based on the flawed offer made by you.

Again, legal remedies take long even in the "real" world. In comparison with the speed of business in the "virtual" world, legal action is generally "too little too late". So preventive action is crucial to avoid legal issues, costs and liabilities, while using the Internet for business.

Company Executive: I understand, but why not still leave it to the lawyers?

Prof TechLaw: When you, as a Company Executive, don't know some vital and basic things about Technology Law, you will not be able to determine what to tell our lawyer. That can be very expensive in the long run because things will fall into the cracks - between you and the lawyer - causing much damage to your business!

Company Executive: I agree. And the 3rd reason?

Prof TechLaw: Well, to put it simply, resolving legal issues related to business over the Internet needs a "multidisciplinary" approach. For instance the lawyer should know enough about the Internet, the law relating to the Internet and how it affects your business plans and operations. So you need to "educate" your lawyer about the Internet and your use of it. On the other hand, the speed of business leaves little time for 'legal' reviews in advance of most operations. So some adroit 'multidisciplinary' work done by you in advance, with your lawyer, could save you much expense, grief and potential liability in the future.

Company Executive: The whole thing still looks a little complex and daunting to me.

Prof TechLaw: I understand how you feel. So every month I plan to talk to you about one significant technology law issue and to demystify it for you. Will that help?

Company Executive: Thanks, that sounds very helpful. I look forward to a talk with you every month.
COMPANIES ACT, 2013: APRIL 2016 CIRCULARS AND NOTIFICATIONS


The following class of companies shall file their financial statement and other documents under section 137 of the Act, with the Registrar in E-form AOC-4 XBRL, namely:

(i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
(ii) all companies having paid up capital of Rs. 5 Crore or above;
(iii) all companies having turnover of Rs. 100 crore or above; or
(iv) all companies which were hitherto covered under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011:

The following proviso shall be substituted, namely:

“Provided that the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies need not file financial statements under this rule.”

These rules may be called the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2016.

They shall come into force on the date of their publication in the Official Gazette.

For the complete text of this circular please refer to the link: [http://www.mca.gov.in/Ministry/pdf/Rules_06042016.pdf](http://www.mca.gov.in/Ministry/pdf/Rules_06042016.pdf)

2. **MCA General Circular No. 3/2016 - Clarification with regard to Companies (Accounting Standards) Amendment Rules, 2016**

This Ministry had launched V2R2 on 28th March, 2016 downtime was given to Infosys from 25th March, 2016 to 27th March, 2016. Since the launch of the system, a number of stakeholders had faced issues and representations were being received from stakeholders to resolve the issues including, for allowing waiver of additional fee till the new system stabilizes.

In view of the above, it had been decided to relax the additional fee payable on e-forms which are due for filing by companies between 25th March 2016 to 30th April, 2016 as one time waiver of additional fee and it was also further clarified to stakeholders that if such due e-forms are filed after 10.05.2016, no such relaxation shall be allowed.

For the complete text of this circular please refer to the link: [http://www.mca.gov.in/Ministry/pdf/General_circular_13042016.pdf](http://www.mca.gov.in/Ministry/pdf/General_circular_13042016.pdf)

3. **MCA General Circular No. 4/2016 - Clarification with regard to Companies (Accounting Standards) Amendment Rules, 2016**
The Ministry of Corporate Affairs, Government of India, vide Notification No. G.S.R. 739(E), dated 7th December, 2006, notified Companies (Accounting Standards) Rules 2006, in the Official Gazette Rule 1, sub-rule (2), provided that the said Rules “shall come into force on the date of their publication in the Official Gazette”. Rule 3, sub-rule (2), of the said Rules provided that the Accounting Standards viz., AS 1 to AS 7 and AS 9 to AS 29, prescribed therein “shall come into effect in respect of accounting periods commencing on or after the publication of these Accounting Standards.”

The Ministry of Corporate Affairs vide its Notification No. G.S.R. 364 (E) dated 30th March, 2016, has issued Companies (Accounting Standards) Amendment Rules 2016, amending AS 2, AS 4, AS 13, AS 21 and AS 29; and replacing the existing AS 6 and AS 10 with revised AS 10. While sub-rule (2) of Rule 1 of the aforesaid Amendment Rules provides that these Rules shall come into force on the date of their publication, these Rules do not specify in respect of which accounting periods the amended Accounting Standards shall come into effect. It is noted that Rule 3, sub-rule (2), of the 2006 Rules, the relevant extract of which is reproduced in paragraph 1 above, has not been amended by the said Amendment Rules. In view of this, many stakeholders have approached the Institute of Chartered Accountants of India, to seek guidance on the applicability of the amended Accounting Standards particularly in the case of listed companies who prepared their financial results of preceding quarters based on the unamended Accounting Standards.

Stakeholders had sought clarifications with regard to the accounting period for which the accounts would need to be prepared using the Accounting Standards, as amended through the Companies (Accounting Standards) Amendment Rules, 2016.

The matter was examined in the Ministry and it was hereby clarified that the amended Accounting Standards would be used for preparation of accounts for accounting periods commencing on or after the date of notification.

For the complete text of this circular please refer to the link:

4. MCA Notification No. G.S.R.(E) dated 6th April, 2016- In exercise of the powers conferred by sub section (1) of section 467 of the Companies Act, 2013 (18 of 2013)
The MCA vide Notification dt. 6th April, 2016 has notified amendments in Schedule III to the Companies Act, 2013. These amendments indicates the revised instructions for preparation of financial statements (i.e. Balance Sheet, P&L A/c, Notes to Accounts, etc.) by the entities those who have to comply with the Companies (Accounting Standards) (AS) Rules, 2006 or the Companies (Indian Accounting Standards) (Ind AS) Rules, 2015.

For the complete text of this circular please refer to the link:

5. MCA Notification No. G.S.R.832 (E) dated 26th April, 2016- section 396 of CA 2013 - Jurisdiction of the state of Telangana
The MCA through notification number G.S.R 832(E) dated 03.11.2015 prescribed the functions to be discharged under sub-section (1) of section 396 of the Companies Act 2013 (herein after referred to as the said Act). In exercise of the powers conferred by sub-section (1) of section 396 of the Act (18 of 2013) (herein after referred to as the said Act), the Central Government notified the jurisdictions of Regional Directors to.

In the said notification in serial number (7), in column (2), for the words "States of Karnataka and Andhra Pradesh" the words "States of Karnataka, Andhra Pradesh and Telangana" shall be substituted. The same shall be deemed to have been substituted with effect from 3rd November, 2015.

For the complete text of this circular please refer to the link:
Health is Wealth!!...we all as a kid have been taught this proverb!....Have we ever bothered to follow it....!! The real meaning lies behind taking care of your health and if one maintains his/her health he gets everything in the life very easily. Do not spend all your health, in search of wealth!

Here are some top 10 tips which will help in your day to day life.

1. **Carry your bottle of water:** It is always hygienic to carry your own bottle of water. Eight to 10 glasses of water is a must to keep you hydrated. We sometimes can’t even trust branded bottles too ; then why take a chance....many times due to workload or due to travelling, you might forget to drink water. Try to sip in water or fruit based juices throughout the day. Even coconut water is a real refresher.

2. **Bring home – made food:** Ghar ka khana is any day better than outside scrumptious yummy food. Behind all that taste lays all the germs and bacteria, which cannot be seen through naked eyes. Home cooked food is best even it is only “dal-chawal”. If you staying away from your family, maybe you can tie up with a tiffin service who provides a balanced meal consisting of salad, roti, subzi, dal and chawal.

3. **Take care of your eyes:** Eyes plays an important role in our life....we live LIFE through them!! Hence, no matter how important your deadlines are!!...everyday close your eyes for 5 minutes or splash water twice a day.

4. **Get proper sleep:** Pledge to sleep for atleast 6 – 8 hours. Adequate amount of sleep not only helps to improve our looks in terms of reducing dark circles n all; but also helps to prepare your brain for the next day. Lesser you sleep, lesser you prepared for upcoming challenges.

5. **Quit smoking:** We all know detrimental effects of smoking – THANKS! to our movie theatres too…but yet still lighting up. Try to cut down and finally just quit the tobacco entering your lung system.

6. **Cut down on caffeine:** Limit to only 1 to 2 cups of coffee or tea in a day. Try switching to green tea or tulsi tea to feel fresh and also to gain health benefits.

7. **Minimum one fruit a day:** Helps to meet up our vitamin requirements and detoxify our body. Well, we wish to even look good with proper weight, then why not start with A FRUIT! Try consuming atleast 2 fruits a day on an empty stomach!

8. **Stretch a bit:** Spare atleast 5 minutes after every 2 hours of work to stretch out. This will help to calm the mind and reduce stress level

9. **Go for a walk:** To stay healthy and to stay happy, the easiest form of exercise can be to just go for a walk. Even a quick 10 mins walk during lunch is a great idea. It’s refreshing and yes!, Helps in burning calories.

10. **Laugh it out:** Wash out your worries and laugh as much as you can. Merge stressed out brain with heart full of laughter.

    And one important tip to maintain your health is to give time to your loved ones.....they are the best stress busters!!!

    **Gain smile, Spread smile and Earn smilessssss!!!**

**Mruga Dholakia**  
Masters in Foods Science and Nutrition  
5 years of work experience in the field of Health and Nutrition
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The First Corporate Law Summit

From Left : CS Kamlesh Joshi, Chairman, ICSI-WIRC, CS Swati Bhatt, Secretary, ICFTI-WIRC, Guest of honour CS Mahavir Lunawat, Council Member, ICSI, CS Ranjeet Pandey, Central Council Member, ICSI, Chief Guest Dr. S. D. Israni, Former Council Member & Advocate, Bombay High Court, CS Keyoor Bakshi, Past President, ICSI, CS Rishikesh Vyas, Immediate Past Chairman, ICSI-WIRC and Chairman, Professional Development Committee

CS Kamlesh Joshi, Chairman, ICSI-WIRC addressing the participants.

Celebration of Earth Day
Corporate Law Summit organised by IMC

The first Corporate Law Summit was organised by Indian Merchant Chambers at Mumbai on 22nd and 23rd April, 2016, which was attended by around 200 professionals from various walks viz. Company Secretaries, Chartered Accountants, Lawyers, Bankers etc. CS Swati Bhatt, Secretary, CSI-WIRC commenced the proceedings of the summit and introduced the chief guest and guest of honour CS Rishikesh Vyas, immediate past Chairman, CSI-WIRC and Chairman, Professional Development Committee introduced the theme of the summit and delivered the introductory remarks. He briefly touched upon various initiatives of WIRC and ICSI and the professional development activities taken by Professional Development Committee of ICSI-WIRC.

"New company law to boost CS prospects"

Ahmedabad: Union government’s initiative to amend the Companies Act will create opportunities for Company Secretaries (CS) who can then appear in cases at the National Company Law Tribunal (NCLT). Pendency of corporate cases will also be reduced with the new bill, Manta Binani, the president of the Institute of Company Secretaries of India, said here on Monday.

Binani was in the city on Friday to announce several new initiatives by the institute. Binani said ICSI has instituted the "ICSI Signature Award" for toppers in the Bachelor of Business Administration course. The institute will also hold an alternate day of national convention of ICSI is likely to be held in November, either in Ahmedabad or at Mahatma Mandir in Gandhinagar, where experts will guide entrepreneurs, Binani said.

CS Olympiad to be held in schools

In a historic move, the Institute of Company Secretaries of India (ICSI) will conduct a CS Olympiad in September 2016. The CS Olympiad will be conducted for students of class XI and XII in over 35,000 schools across India. The aptitude test will be conducted at the state and district level wherein students will answer questions on commerce.

Manita Binani, president of ICSI, said, “It is not possible to reach every nook and corner of the country. But, through this aptitude test we will be able to reach them young when they are thinking of professions.”

Furthermore, the schools organising the Olympiad will also be awarded along with the students who top the exam. The toppers will be awarded certificates and prizes. A team of 10 students from the top 3 schools in each state will be selected to represent the state for the national final. The top 30 students will be invited to ICSI headquarters in New Delhi for the national final on 12-13 April.

Acknowledging hard work

ICSI Signature award will also be awarded to the topper of the exam. The topper will be considered for the award only if he/she has completed Bachelor's degree in commerce at Central University of Jammu and also in specialized programmes of the institute. Five signature awards will be conferred by the ICSI each year.
मोहरा गुजराती हिन्दी
मोहरा दैनिक अहमदाबाद
अहमदाबाद रा. । 12 ऑक्टोबर, 2016
आईडीसीएसआई द्वारा पंगालौगी जेलारोड़
कंपनी सेकेटरी व्यवसाय के लिए
वैश्विक पूर्वेक्षण तेज़ : मनवा विनायकी

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वैश्विक पूर्वेक्षण तेज़ : मनवा विनायकी
FOCUS

TUESDAY 12-04-2016

WIRC

ICANP sought to improve the quality of the services provided to its members. The focus was on training the ICANP members to provide better services to their clients.

AHMEDABAD
TUESDAY, 12-04-2016

ICANP sought to improve the quality of the services provided to its members. The focus was on training the ICANP members to provide better services to their clients.
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