VOL. 3, OCTOBER 2021

CMA CORPORATE CONNECT

The Institute of Cost Accountants of India

(Statutory body under an Act of Parliament)

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ABOUT THE INSTITUTE

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA (erstwhile The Institute of Cost and Works Accountants of India) was first established in 1944 as a registered company under the Companies Act with the objects of promoting, regulating and developing the profession of Cost Accountancy.

MISSION STATEMENT

The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.

VISION STATEMENT

The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.

President's Message

II am pleased to note that the Corporate Laws Committee of the Institute is bringing out its 3rd "E-Bulletin".

You are aware that the Institute is taking all necessary steps for the capacity building of its members by releasing digital publications and E-bulletins on various subjects. Release of this e-bulletin on Corporate Laws is one very important step in this direction.

I express my gratitude to our resource persons for their valuable inputs and contribution in this volume e-bulletin.

I congratulate CMA (Dr.) Ashish P. Thatte, Chairman Corporate Laws Committee for his continuous efforts to upskill the members and students in Corporate Laws through various initiatives during the whole year including such "E-Bulletin" and other members of the Committee for their incessant support.

I wish Corporate Laws Committee all the success in its initiatives.

Warm regards,

Biswarup Basu

CMA Biswarup Basu

September 9, 2021

Vice President's Message

It is indeed a great pleasure to know that the Corporate Laws Committee of the Institute is bringing out the 3rd edition of its E-Bulletin. With the required changes in laws like rules, regulations, notifications and important judgements in the corporate laws, a bulletin like this consolidates the content and acts as an invaluable resource for all stakeholders who consider it important to stay abreast of important updates and development taking place in Corporate Laws.

I would like to acknowledge the continuous efforts of CMA (Dr.) Ashish P Thatte, Chairman, Corporate Laws Committee, other members of the Committee and resource persons who are contributing with their valuable inputs for the benefit of members and students.

My best wishes to all the Readers and Members of the Committee.

Warm regards,

P. Rajiyer

CMA P. Rajulyer

September 9, 2021

From the Desk of Chairman

Dear Friends and Professional Colleagues,

I along with my Committee colleagues hope that you are your dear and near ones are safe and healthy and further pray to almighty well- being of all the professionals, members and students of CMA fraternity and their families.

The Corporate Laws Committee has taken full efforts through-out the year to remain connected with our members by organizing webints on various topics of significant relevance. The Committee celebrated the National Corporate Law Month in this year which was followed by a seminar under covid protocols and which was graced by ShriArjun Ram MeghwalHon'ble Union Minister of State for Parliamentary Affairs and Heavy Industries & Public Enterprises. Recently also, the committee organized a webcast on Cost Audit which was instantly popular amongst members and students. Thus the Committee has been very focused on generating awareness among students and members on corporate laws.

I am very happy to place the Third edition of the Corporate Laws in your hands. E-bulletin covers latest notifications, case laws etc. on relevant topics. We shall look forward to your support and encouragement, as always.

Yours truly

CMA (Dr.) Ashish P Thatte

September 7, 2021

NOTIFICATIONS AND CIRCULARS

General Circular No. 14/2021 Government of India
Ministry of Corporate Affairs

Dated : 25/08/2021

MCA has released an updated set of Frequently Asked Questions (FAQs) on the Corporate Social Responsibility (CSR), which supersedes all previous General Circulars/ Clarifications/ Letters of the Ministry on the Subject.

General Circular No. 13/2021 Government of India
Ministry of Corporate Affairs

Dated 30/07/2021

MCA Clarification on spending of CSR funds for COVID-19 vaccination. MCA has further clarified that spending of CSR funds for COVID-19 vaccination for persons other than the employees and their families, is an eligible CSR activity. Earlier, MCA had clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, vide General Circular 10/2020 dt. 23/03/2020. The companies may accordingly undertake the aforesaid activity, subject to fulfillment of Companies (CSR Policy) Rules, 2014.

General Circular 10/2021 Government of India
Ministry of Corporate Affairs

Dated 23/06/2021

MCA clarifies/ allows holding of EGMs and passing of ordinary and special resolutions by Companies during COVID 19 pandemic through VC/ OAVM/ Postal Ballot, upto 31/12/2021.

Circular Government of India
Ministry of Corporate Affairs

Dated 20/05/2021

MCA has clarified that a company can offset the excess CSR spent of FY 2019-20, in 2020-21, i.e. the amount of CSR Expense incurred in FY 2019-20 which is over and above the minimum prescribed amount u/s 135(5) can be offset in FY 2020-21, subject to certain conditions/ disclosures.

General Circular 9/2021 Government of India
Ministry of Corporate Affairs

Dated 05/05/2021

MCA clarification on spending of CSR funds towards creation of health infrastructure for COVID Care, establishment of medical oxygen generation and storage plants, manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID 19, etc., to be considered as eligible CSR activities. Also, MCA has clarified that any contributions for such activities, to be considered as eligible CSR activity.

General Circular 8/2021Government of India
Ministry of Corporate Affairs

Dated 03/05/2021

MCA has clarified that the requirement of holding Board Meetings within the interval of 120 days as prescribed u/s 173, stands extendedto 180 days in respect of the first two quarters of FY 2021-22, in view of COVID 19 pandemic.

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, the 19th August, 2021

G.S.R. 579(E). – In exercise of the powers conferred by section 149 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021.

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

2. In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6, in sub-rule (4):–

   (i) in the first proviso, for clause (B), the following clause shall be substituted, namely:–

   "(B) in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling:–

   (i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or

   (ii) the affairs related to Government companies or statutory corporations set up under an Act of

   Parliament or any State Act and carrying on commercial activities.".

   (ii) after the second proviso, the following proviso shall be inserted, namely:–

   "Provided also that the following individuals, who are or have been, for at least ten years:–

   (A) an advocate of a court; or

   (B) in practice as a chartered accountant; or

   (C) in practice as a cost accountant; or

   (D) in practice as a company secretary,

   shall not be required to pass the online proficiency self-assessment test.".

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, the 19th August, 2021

G.S.R. 580(E). – In exercise of the powers conferred by section 150 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, namely:-

1. **Short Title and Commencement**.%

    (1) These rules may be called the Companies (Creation and Maintenance of databank of Independent Directors) Second Amendment Rules, 2021.

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

2. In the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, after rule 5, the following rule and the Schedule shall be inserted, namely:-

    "6. **Annual report on the capacity building of independent directors**:- The institute shall within sixty days from the end of every financial year send an annual report to every individual whose name is included in the data bank and also to every company in which such individual is appointed as an independent director in format provided in the Schedule to these Rules.

SCHEDULE
Annual Report on Capacity Building of Independent Director

(To be submitted by the institute)

Director's Name:

DIN Number:

IDDB Registration Number:

Subscription (1 yr/5 yr/Lifetime):

Membership Validity:

Online Self-Assessment Proficiency Test Status (N.A if exempted):

A. Participation during the Financial Year _______

E-Learning Modules		Other Training Programs/ Courses		Colloquium/Workshops/ Events of IDDB	
No. of modules released by the institute during the FY	No. of modules completed by the reportee	No. of courses organized by the institute during the FY	No. of courses attended by the reportee	No. of events organized by the institute during the FY	No. of events attended by the reportee

B. Total Participation

E-Learning Modules		Other Training Programs/ Courses		Colloquium/Workshops/ Events of IDDB	
No. of modules released by the institute till date	No. of modules completed by the reportee	o. of courses organized by the institute till date	No. of courses attended by the reportee	No. of events organized by the institute till date	No. of events attended by the reportee

SEBI Circular 2021/619 dt. 17/08/2021

SEBI amends the Delivery Mechanism/ Norms to impose 3% Penalty for Repeated Delivery Defaults.

SEBI Circular 2021/618 dt. 13/08/2021

Security and Covenant Monitoring using Distributed Ledger Technology.

SEBI Circular 2021/617 dt. 13/08/2021

SEBI clarifies that manual filing of disclosures is no longer mandatory, where System Driven Disclosures (SDD) have been implemented w.e.f. 01/04/2021, as required under SEBI Prohibition of Insider Trading Regulations 2015.

SEBI Circular 2021/616 dt. 13/08/2021

SEBI amends Format of Table II under LODR Regulation 31(4) for Disclosure of shareholding pattern of promoter(s) and promoter group entities. As per revised Format, all listed entities are required to disclose the shareholding pattern of the Promoters and Promoter Group in Table II segregated into promoter(s) and promoter group in lieu of existing practice of collective disclosure of the shareholdings of promoter(s) and promoter group entities.

SEBI Circular 2021/615 dt. 13/08/2021

SEBI prescribes detailed procedure for tendering of shares in open offers, buy-back offers & delisting offers and settlement thereof by marking lien in the demat account of the shareholders under the revised mechanism.

SEBI Circular 2021/614 dt. 13/08/2021

SEBI Guidelines on issuance of non-convertible debt instruments along with warrants ('NCDs with Warrants').

SEBI Circular 2021/613 dt. 10/08/2021

SEBI prescribes Consolidated Operational Guidelines/ Chapter-wise framework for issue, listing and trading of Non-Convertible Securities (NCS), Securitised Debt Instruments (SDI), Security Receipts (SR), Municipal Debt Securities and Commercial Paper (CP).

SEBI Circular 2021/612 dt. 09/08/2021

SEBI modifies norms relating to 'Calendar Spread margin benefit in commodity futures contracts', i.e. SEBI extends this benefit beyond the first three expiries to increase liquidity in far month contracts, facilitate hedging by value chain participants and reduce cost of trading. It may be noted that this Circular shall be effective for one month from the issue date.

SEBI Circular 2021/611 dt. 04/08/2021: SEBI advisory for compliance with the Requirement of minimum number and holding of unit holders for unlisted Infrastructure Investment Trusts (InvITs), under InvIT Regulations within 6 months.

SEBI Circular 2021/610 dt. 04/08/2021

SEBI has clarified/ instructed Mutual Funds on Maintenance of Current Accounts in multiple banks, for the purpose of receiving subscription amount and for payment of redemption/ dividend/ brokerage/ commission etc. to facilitate financial inclusion, convenience of investors and ease of doing business.

SEBI Circular 2021/609 dt. 04/08/2021

SEBI modifies Operational Guidelines for FPIs and DDPs pursuant to amendment in SEBI (Foreign Portfolio Investors) Regulations, 2019.

SEBI Circular 2021/605 dt. 03/08/2021

SEBI Permits RBI Approved Non Scheduled Payments Banks to register as 'Bankers To Issue (BTI)'.

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, the 22nd July, 2021

G.S.R. 503(E). – In exercise of the powers conferred by sub-sections (1) and (3) of section 16, and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Incorporation) Fifth Amendment Rules, 2021.

   (2) They shall come into force from the 1st September, 2021.

2. In the Companies (Incorporation) Rules, 2014, after rule 33, the following rule shall be inserted, namely:-

   "33A. Allotment of a new name to the existing company under section 16(3) of the Act.

   (1) In case a company fails to change its name or new name, as the case may be, in accordance with the direction issued under sub-section (1) of section 16 of the Act within a period of three months from the date of issue of such direction, the letters "ORDNC" (which is an abbreviation of the words "Order of Regional Director Not Complied"), the year of passing of the direction, the serial number and the existing Corporate Identity Number (CIN) of the company shall become the new name of the company without any further act or deed by the company, and the Registrar shall accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No.INC-11C:

   Provided that nothing contained in sub-rule (1) shall apply in case e-form INC-24 filed by the company is pending for disposal at the expiry of three months from the date of issue of direction by Regional Director, unless the said e-form is subsequently rejected.

   (2) A company whose name has been changed under sub-rule (1) shall at once make necessary compliancewith the provisions of section 12 of the Act and the statement, "Order of Regional Director Not Complied (under section 16 of the Companies Act, 2013)" shall be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved:

   Provided that no such statement shall be required to be mentioned in case the company subsequently changes its name in accordance with the provisions of section 13 of the Act.".

3. In the Annexure, after Form No.INC-11B, the following form shall be inserted, namely:-

4. THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—SEC. 3(i)] Form No. INC-11C

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Office of the Registrar of Companies

< Address of the RoC Office >

Certificate of Incorporation pursuant to change of name due to Order of Regional Director not being Complied

[Pursuant to rule 33A of the Companies (Incorporation) Rules, 2014]

Corporate Identity Number (CIN): <CIN>

I hereby certify that the name of the company has been changed under section 16(3) of the Companies Act, 2013 from <Last Name of the company>to <New name of the company> with effect from the date of this certificate and that the company is <limited by shares/limited by guarantee/ unlimited company>.

Given under my hand at < Name of the city where the ROC Office is located> this <Date of approval of the work item in words (i.e. FIRST, SECOND etc.)> day of <Month of approval of the work item in words>

two thousand <YEAR of approval of the work item in words><Full name of the Authorising officer approving the work-item><Assistant Registrar of Companies/ Deputy Registrar of Companies/ Registrar of Companies>

Registrar of Companies

<Name of the RoC Office>

SEAL:

Registrar/Deputy Registrar of companies/Assistant Registrar of companies

(State)

Mailing Address as per record available in Registrar of Companies office:

< Name of the company >

< Address of the registered office of the company >

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, the 1st April, 2021

G.S.R. 247(E). – In exercise of the powers conferred by section 134 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Accounts) Second Amendment Rules, 2021. (2) They shall come into force with effect from the 1st day of April, 2021.

   (2) In the Companies (Accounts) Rules, 2014, in proviso to sub-rule (1) of rule 3, for the figures, letters and words "1st day of April, 2021", the figures, letters and words "1 st day of April, 2022" shall be substituted. [F. No. 1/19/2013-CL-V-Part III]

G.S.R. 418(E). – In exercise of the powers conferred by section 150 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, to amend the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, namely:-

1. Short Title and Commencement.—

   (1) These rules may be called the Companies (Creation and Maintenance of databank of Independent Directors) Amendment Rules, 2021.

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

2. In the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, in rule 3,- (a) in sub-rule (7), in clause (a), after the words "for inclusion", the words "or renewal" shall be inserted; (b) after sub-rule (7), before explanation, the following sub-rule shall be inserted, namely:- "(8) In case of delay on the part of an individual in applying to the institute under sub-rule (7) for inclusion of his name in the data bank or in case of delay in filing an application for renewal thereof, the institute shall allow such inclusion or renewal, as the case may be, under rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 after charging a further fees of one thousand rupees on account of such delay.".

   In Labour law: Notifications issued by Ministry of Labour and Employment –

   (a) Notification on enforcement of section 142 of the Code on Social Security, 2020; and

   (b) Notification of draft Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021.

(1) Banking law: Notifications / Circulars by Reserve Bank of India ("RBI") - (a) Press release issued by RBI on On-Tap term liquidity facility to ease access to emergency health services; and (b) Circular and press release by RBI on prepaid payment instruments.

Waiver of Additional Fees in relation to the additional time granted to Companies / LLPs for filing various ROC forms

New Definition of Micro, Small and Medium Enterprises –

Addition of Retail and Wholesale Trade Please refer to the circulars FIDD.MSME & NFS.BC.No.3/06.02.31/2020-21 dated July 2, 2020 on 'Credit flow to Micro, Small and Medium Enterprises Sector' and FIDD.MSME & NFS.BC.No.4/06.02.31/2020-21 dated August 21, 2020, on 'New Definition of Micro, Small and Medium Enterprises- clarifications'.

2. In this connection, **Ministry of Micro, Small and Medium Enterprises vide Office Memorandum (OM) No. 5/2(2)/2021-E/P & G/Policy dated July 2, 2021,** has decided to include Retail and Wholesale trade as MSMEs for the limited purpose of Priority Sector Lending and they would be allowed to be registered on Udyam Registration Portal for the following NIC Codes and activities mentioned against them: 45 Wholesale and retail trade and repair of motor vehicles and motorcycles 46 Wholesale trade except of motor vehicles and motorcycles 47 Retail trade except of motor vehicles and motorcycles

3. The Enterprises having UdyogAadhaar Memorandum (UAM) under above three NIC Codes are now allowed to migrate to Udyam Registration Portal or file Udyam Registration afresh.

JUDGMENTS

- **Supreme Court lifts Prohibition on crypto-currencies**

  Internet and Mobile Association of India v. Reserve Bank of India [2020]

  Supreme Court's ruling

  The three-judge bench of the Supreme Court allowed the petition on the ground of 'proportionality'. The court in a ruling which will have far-reaching implication said that "when the consistent stand of RBI is that they have not banned virtual currencies and when the government of India is unable to take a call despite several committees coming up with several proposals, including two draft bills, both of which advocated exactly opposite positions, it is not possible for us to hold that the impugned measure is proportionate."

- **Daughter has an equal right as son as coparcener of a HUF under Hindu Succession Act: SC**

  Vineeta Sharma v. Rakesh Sharma [2020]

  We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed

due to a legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months," said the Apex Court judgment.

- **Apex Court dismisses plea to transfer fund from PM CARES to NDRF to fight COVID-19**

  Centre For Public Interest Litigation v. Union of India [2020]

  Apex Court's ruling

  The Supreme Court held that any contribution, grant of any individual or institution is not prohibited to be credited into the NDRF and it is still open for any person or institution to contribute to the NDRF in terms of Section 46(1)(b) of the Act, 2005.

  The contribution by any person or by any institution in PM CARES Fund is voluntary and it is open for any person or institution to contribute to the PM CARES Fund, it added. The Apex Court further held that the funds collected in the PM CARES Fund were funds of public charitable trust and there is no occasion for issuing any direction to transfer them to the NDRF. "The prayer of the petitioner to direct all the funds collected in the PM CARES Fund till date to be transferred to the NDRF is refused," said the Apex Court judgment.

- **Cooperative banks fall under purview of SARFAESI Act, Rules Supreme Court.**

  PandurangGanpatiChaugule v. VishwasraoPatilMurgudSahakari Bank Limited [2020]

  The Apex Court held that the cooperative banks and multi-state cooperative banks are 'banks' under section 2(1)(c) of the SARFAESI Act.

  As loan recovery is an essential part of banking, the court said, the procedure prescribed under section 13 of the SARFAESI Act, legislation relatable to Entry 45 List-I of Seventh Schedule to Constitution of India, is applicable.

  At the same time, the court held that aspects like 'incorporation, regulation and winding up' of cooperative banks run by cooperative societies registered under the state legislation would continue to be governed by legislations relatable to Entry 32 of List-II of the Seventh Schedule of the Constitution.

- **SC stays IBC (Amendment) Ordinance**

  The stay granted by the Supreme Court against the operation of the Ordinance, many believe, is in tandem with the spirit of the IBC. The Apex Court's stay order has restored the right of a home buyer to initiate corporate insolvency resolution proceedings against the developer/builder before the NCLT. The stay order will provide relief to homebuyers, especially those who have paid the money or are paying the money without any hope of getting possession of their dream house.

- **SC Upholds govt's trade restrictions on import of pulses**

  Union of India v. Agricas LLP [2020]

  Supreme Court's ruling

  The Supreme Court upheld the notifications and the trade notices issued by the Government and rejected the challenge made by the importers.

The Apex Court further said that imports made relying on interim orders would be held to be contrary to the notifications and the trade notices issued under the FTDR Act, and would be so dealt with under the provisions of the Customs Act, 1962.

"Writ Petitions filed by the intervenors before the respective High Courts shall stand dismissed in terms of this decision. Pending application(s), if any, also stand disposed of …," said the Supreme Court order while dismissing the petition.

Banks are legally obliged to hand over title deeds to successful bidder of an auction sale: SC

- **Tripower Enterprises (P.) Ltd. v. State Bank of India [2020]**

  Supreme Court's ruling

  The Apex court ruled that as the appellant (auction purchaser) has been issued a sale certificate, the appellant is entitled to receive the title documents in respect of the properties referred to in the sale certificate. The mere fact that the bank did not challenge the impugned decision of the High Court, cannot undermine the direct interest of the appellant in getting the relief which was earlier claimed by the bank to fulfill its obligation of handing over the original documents to the auction purchaser, the Apex Court observed.

- **Collective Investment Scheme' floated by a private trust is illegal: Supreme** court

  Osians Connoisseurs of Art (P) Limited v. Securities and Exchange Board of India (SEBI) [2020]

  Supreme Court's Judgment

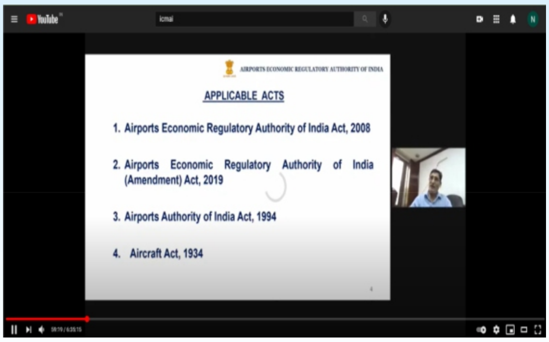
  The Apex Court tried to deal with the issue in the light of the provisions of the SEBI (CIS) Regulations, 1999. As per Regulation 2(h), 'Collective Investment Management Company means a company incorporated under the Companies Act, 1956 and registered with the Board under these regulations, whose object is to organize, operate and manage a collective investment scheme.'

  Regulation 3 states that 'No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.'

  The Supreme Court ruled that under the statutory scheme of things, a collective investment scheme can only be floated by a collective investment management company and in no other form.

  "Once the statutory scheme becomes clear, it is clear that the collective investment scheme that was being carried on by the appellants in the form of a private trust would be in the teeth of the Statute read with the CIS Regulations and would thus be illegal," the Apex Court said.

Glimpses of Webinar on Cost Audit- The Ethos of Industry held on 6th August 2021



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