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GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DIRECTORATE OF EDUCATION
(PRIVATE SCHOOL BRANCH)
OLD SECRETARIAT, DELHI-110054

No. F.DE.15 (178)/PSB/2019/1080-1084 Dated: 14/3/2019

Order

WHEREAS, this Directorate vide its order No. DE.15 (318)/PSB/2016/19786 dated 17.10.2017 issued 'Guidelines for implementation of 7th Central Pay Commission's recommendations in private unaided recognized schools in Delhi' and directed that the private unaided schools, which are running on land allotted by DDA/other govt. agencies with the condition in their allotment letter to seek prior approval of Director (Education) before any fee increase, needs to submit their online fee increase proposal for the academic session 2017-18. Accordingly, vide circular no. 19849-19857 dated 23.10.2017, the fee increase proposals were invited from all aforesaid schools till 30.11.2017 and this date was further extended to 14.12.2017 vide Directorate's order No. DE.15 (318)/PSB/2016/20535 dated 20.11.2017 in compliance of directions of Hon'ble High Court of Delhi vide its order dated 14.11.2017 in CM No. 40939/2017 in WPC 10023/2017.

AND WHEREAS, attention is also invited towards order of Hon'ble High Court of Delhi dated 19.01.2016 in writ petition No. 4109/2013 in the matter of Justice for All versus GNCTD and others wherein it has been directed by the Hon'ble Delhi High Court that the Director of Education will ensure the compliance of conditions, if any, in the letter of allotment regarding prior approval of Director of education for the increase of fee by all the recognized unaided schools which are allotted land by DDA.

AND WHEREAS, the Hon'ble High Court of Delhi while issuing the aforesaid direction has observed that the issue regarding the liability of private unaided schools situated on the land allotted by DDA at concessional rates has been conclusively decided by the Hon'ble Supreme Court in the judgment dated 27.04.2004 passed in Civil Appeal No. 2699 of 2001 titled Modern School V. Union of India and others wherein Hon'ble Supreme Court in Para 27 and 28 has held as under:-

"27....

(c) It shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with...

28. We are directing the Director of Education to look into the letters of allotment issued by the Government and ascertain whether they (terms and conditions of land allotment) have been complied with by the schools.......

.....If in a given case, Director finds non-compliance of above terms, the Director shall take appropriate steps in this regard."

AND WHEREAS, the Hon'ble Supreme Court in the above said Judgment also held that under section 17(3), 18(4) of Delhi School Education Act, 1973 read with rule 172,173,175 and 177 of Delhi School Education Rules 1973, Directorate of Education has the authority to regulate the fee and other charges to prevent commercialization of education.

AND WHEREAS, in pursuance to order dated 23.10.2017 of this Directorate, **Max Fort School, Sector 23, Rohini, New Delhi-110085 (School Id: 1413291)** had submitted the proposal for increase in fee for the academic session 2017-18 including the impact on account of implementation of recommendations of 7th CPC with effect from 01.01.2016.

AND WHEREAS, in order to ensure that the proposals submitted by the schools for fee increase are justified or not, this Directorate has deployed teams of expert Chartered Accountants at HQ level who have evaluated the fee proposals of the school very carefully in accordance with the provisions of the DSEA, 1973, the DSER, 1973 and other orders/ circulars issued from time to time by this Directorate for fee regulation.

AND WHEREAS, necessary records and explanations were also called from the school vide email dated March 26, 2018. Further, school was also provided opportunity of being heard on June 22, 2018 to present its justifications/ clarifications on fee increase proposal including audited financial statements and based on the discussions, school was further asked to submit necessary documents and clarification on various issues noted.

AND WHEREAS, the reply of the school, documents uploaded on the web portal for fee increase and subsequent documents submitted by the school on May 04, 2018 and July 03, 2018 were evaluated by the team of Chartered Accountants. The key findings noted are as under:

Financial Irregularities

I. As per Clause 14 of Order No. F.DE. /15(56)/Act/2009/778 dated 11 Feb 2009 and Clause 7 of Order No. DE 15/Act/Duggal.com/203/99/23033-23980 dated 15 Dec 1999 stated "Development fee, not exceeding 15% of the total annual tuition fee may be charged for supplementing the resources for purchase, up gradation and replacement of furniture, fixtures and equipment. Development fee, if required to be charged, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head along with income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account. On review of the financial statement following observations are noted:

a. Development fee was utilised for renovation of building amounting to Rs. 99,47,264 in FY 2015-16 and for up gradation of assets amounting to Rs. 66,39,277 in FY 2016-17 but the same was neither reflecting in income and expenditure account nor reflecting in fixed assets schedule forming part of the financial statement. However, as per the school submission in its response to the discussion held at DoE premises, it is held that the aforesaid expenditures were incurred for addition to the existing Building and was not capitalised in the books of accounts and therefore not reflecting in the financial statements of the school.

   Further, clause 2 of the Public Notice dated 4 May 1997 State that "It is the responsibility of the society who has established the school to raise funds from their own sources or donations from the other associations because the immovable property of the school becomes the sole property of the society". Accordingly, the costs relating to purchase of land and construction of the building should be borne by the society and not from the school fund. Moreover, the Hon'ble High Court of Delhi in its Judgment dated 30 October, 1998 in case of Delhi Abibhavak Mahasangh concluded that "Tuition Fee cannot be fixed to recover capital expenditure to be incurred on the properties of the Society". And, also clause (vii) of order No. F.DE/15/Act/2k/243/KKK/883-1982 dated 10 Feb, 2005 issued by this Directorate state that "Capital Expenditure cannot constitute a component of financial fee structure".

   In addition to the above, Rule 177 of DSER, 1973 also state that income derived by unaided recognised schools by way of fees shall be utilised in the first instance, for meeting the pay, allowance and other benefits admissible to the employee of the school. Provided that savings, if any from the fees collected by such school may be utilised by its managing committee for meeting capital or contingent expenditure of the school or for one or more of the specified education expenses.

   Accordingly, the total expenditure of Rs. 1,65,86,541 incurred by the school on construction / upgradation of building was not in accordance with the aforesaid provisions. Therefore, the school is directed to recover the aforesaid amount from the society.

b. In addition to the above, the financial statements of the school also reflect addition under the head building amounting to Rs. 9,64,700 and Rs. 31,32,433 in FY 2015-16 and 2016-17 out of the development fund which was not in accordance with the provisions of clause 14 of the order dated

11.02.2009. Therefore, the school is directed to recover Rs. 40,97,133 from the society against the total expenditure incurred by the school for construction of building. Further, the School is directed to make necessary adjustment in development fund and in Fund utilized against fixed assets.

II. Clause 2 of the Public Notice dated 4 May 1997 State that "It is the responsibility of the society who has established the school to raise funds from their own sources or donations from the other associations because the immovable property of the school becomes the sole property of the society". Accordingly, the costs relating to purchase of land and construction of the building should be borne by the society and not from school fund. Additionally, the Hon'ble High Court of Delhi in its Judgment dated 30 October, 1998 in case of Delhi Abibhavak Mahasangh concluded that "Tuition Fee cannot be fixed to recover capital expenditure to be incurred on the properties of the Society". And also clause (vii) of order No. F.DE/15/Act/2k/243/KKK/883-1982 dated 10 Feb, 2005 issued by this Directorate states "Capital Expenditure cannot constitute a component of financial fee structure".

Moreover, Rule 177 of DSER, 1973 also state that income derived by unaided recognized schools by way of fees shall be utilized in the first instance, for meeting the pay, allowance and other benefits admissible to the employee of the school. Provided that savings, if any from the fees collected by such school may be utilized by its managing committee for meeting capital or contingent expenditure of the school or for one or more of the specified education expenses.

On review of the financial statements of the school for FY 2014-15, it has been observed that assets (i.e. building, tennis court, air conditioner, electric installation, EPABX, Fire extinguishers, logo and Photostat machine) worth Rs. 14,75,68,085 were transferred from society to school account. Out of the total assets transferred, Rs. 14,05,07,856 was related to building but corresponding contribution from society is not appearing in the financial statements. However, the school was asked to provide the complete details of aforesaid transfer along with accounting entries passed in the books of accounts and the ledger of the society. But the school has not submitted the aforesaid details despite of sending repetitive reminders through e-mail dated 18 July, 2018 & 24 July, 2018. So, in the absence of the detailed information, it has been concluded that the school does not have any explanation in this regard. Accordingly, the school is directed to recover the difference of Rs. 6,35,35,454 (Rs.14,05,07,856-Rs.7,69,72,402) i.e. amount of building transferred net of unsecured loan balance of the society as on 31.03.2017 appearing in the financial statements from the society. Further, the school is also directed to treat the outstanding balance of unsecured loan of Rs. 7,69,72,402 as a contribution from society.

III. As per Rule 177 of DSER, 1973 income derived by an unaided recognised school by way of fees shall be utilised in the first instance, for meeting the pay, allowance and other benefits admissible to the employee of the school. Provided that savings, if any from the fees collected by such school may be utilised by its managing committee for meeting capital or contingent expenditure of the school or for one or more the specified education expenses after creation of 10% reserve.

a. As per the reply submitted by the school, secured loan amounting to Rs. 5,00,00,000 was taken from Indian Overseas Bank in FY 2010-11 for upgradation, renovation of building, purchase of furniture, equipment etc on which the school has paid Rs. 1,90,27,765 towards principal repayment and Rs. 27,94,884 towards interest cost during FY 2014-15 to 2015-16 out of the school funds which was not in accordance with the aforesaid provisions of Rules 177 of DSER 1973. Therefore, the school is directed to recover the aforesaid amounts from the society. Further, the School is also directed to make necessary adjustment in the Capital Fund account for interest charged in the Income and Expenditure account. Summary of principal repayment and interest paid during the period is as under:

(Figures in Rs.)

Particulars	2014-15	2015-16	Total
Principal repaid	1,15,67,603	74,60,162	**1,90,27,765**
Interest paid on loan	21,04,376	6,90,508	**27,94,884**

b. Further, the school has also paid Rs. 1,98,66,713 towards principal repayment and Rs. 23,83,013 towards interest cost on bus and car loans out of the school funds which was not in accordance with the aforesaid provision of Rule 177 of DSER, 1973. Therefore, the school is directed to recover the aforesaid amounts from the society. Further, the school is also directed to make necessary adjustment in the Capital Fund account for the amount charged in the Income and Expenditure account. Summary of principal repayment and interest paid during the period is as under:

(Figures in Rs.)

Particulars	2014-15	2015-16	2016-17	Total
Principal repaid on loan	1,05,46,014	63,74,997	29,45,702	**1,98,66,713**
Less: Sale proceeds of vehicles				**61,50,000**
Total				**1,37,16,713**
Interest paid on loan	13,87,800	7,77,748	2,17,465	**23,83,013**
Net Total				**1,60,99,726**

IV. In respect of earmarked levies, school is required to comply with:

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- Clause 22 of order dated 11.02.2009, which specifies that earmarked levies shall be charged from user students on 'no profit no loss' basis;
- Rule 176 of DSER, 1973, which provides that 'income derived from collections for specific purpose shall be spent only for such purpose';
- Judgement of Hon'ble Supreme Court of India in the case of Modern School Vs Union of India and Others, which specifies that schools, being run as non-profit organizations, are supposed to follow fund-based accounting.

However, on review of audited financial statements of the FY 2014-15, 2015-16 and 2016-17, the school has collected earmarked levies namely transport fee, lab fee and activity fee but these fees are not charged on 'no profit no loss' basis as school has earned surplus from all these earmarked levies. Further, the school has not followed fund based accounting in respect of earmarked levies as specified in Guidance Note - 21. Therefore, School is directed to follow Guidance Note 21: Accounting by Schools.

Further, as per the Duggal Committee report, there are four categories of fee that can be charged by a school. The first category of fee comprises of "registration fee and all One Time Charges" levied at the time of admission such as admission and caution money. The second category of fee comprise of "Tuition Fee" which is to be fixed to cover the standard cost of the establishment and also to cover expenditure of revenue nature for the improvement of curricular facilities like library, laboratories, science and computer fee up to class X and examination fee. The third category of the fee should consist of "Annual Charges" to cover all expenditure not included in the second category and the forth category should consist of all "Earmarked Levies" for the services rendered by the school and to be recovered only from the 'User' students. These charges are transport fee, swimming pool charges, Horse riding, tennis, midday meals etc.

Considering the aforesaid recommendation and on review of the financial statements it has observed that the school has deliberately determine the transportation charges in such a way, so that the surplus amount if any can be utilized for payment of finance cost. During the period under evaluation, the school has generated surplus of Rs. 92,36,479 from transportation charges after meeting the interest cost of Rs. 23,83,013. This depicts that transportation charges were not determined in accordance with the provision of Rule 22 of the order dated 11.02.2009 and therefore, the school is directed to determine the earmarked levies in accordance with the said rule.

Other Irregularities

I. The fixed assets are reflected in the financial statements under two categories i.e. assets purchased out of Capital Fund are reflected at the written down value and whereas assets purchased out the development fund are reflected at cost. Thus, the financial statements reflect the amount of fixed assets under two group.

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Therefore, the school is directed to follow GN-21 "Accounting by School" issued ICAI in respect of preparation and presentation of financial statements.

II. On review of the income and expenditure account, it has been observed that school has been incurring higher expenditure under the following heads during the period 2014-15 to 2016-17. Therefore, the school is directed to monitor the relevance and exercise control over these expenditures.

(Figures in Rs.)

Particulars	**As per I &E account for FY 2014-15**	**As per I &E account for FY 2015-16**	**As per I &E account for FY 2016-17**
Health check up	21,10,092	11,11,650	44,653
Meals and Refreshment expenses	17,65,223	13,49,220	8,66,089
Excursion expenses	-	9,50,890	17,715
Vehicle maintenance and transportation expenses	1,07,45,973	1,53,45,563	1,45,38,602
Advertisement expenses	29,34,406	36,28,109	15,56,900
Legal & Professional expenses	21,28,498	37,27,425	74,62,439

III. The following observations were noted in relation to caution money:

a. As per Clause 4 of Order No. DE./15/150/ACT/2010/4854-69 dated 09.09.2010,the un-refunded caution money (un-refunded more than 30 days) belonging to ex-students shall be reflected as income for the next financial year. However, school has shown the un-refunded caution money as liability. Further, school has not provided details of number of students left the school in FY 2014-15 to FY 2017-18 and hence no financial impact of the same could be ascertained.

b. As per clause 18 of order no. F.DE. /15(56)/Act/2009/778 dated 11.02.2009, the caution money collected shall be kept deposited in a schedule bank in the name of the concerned school. However, school has not deposited caution money in separate bank account.

After detailed examination, considering all the material on record and clarification submitted by the school it was finally evaluated/ concluded that:

i. The total funds available for the year 2017-18 amounting to Rs. **29,97,33,281** out of which cash outflow in the FY 2017-18 is estimated to be Rs. **21,89,90,471**. This results in surplus of funds amounting to Rs. **8,07,42,810**. The details are as follows:

(Figures Rs.)

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Particulars	Amount
Cash and Bank balances as on 31.03.17 as per audited Financial Statements	90,42,927
Add: Investments as on 31.03.17 as per audited Financial Statements	63,22,885
Add: Recoverable from society against expenditure incurred on building out of development fund not reflecting in the financial statements of the school	1,65,86,541
Add: Recoverable from society for addition to building out of development fund	40,97,133
Add: Recoverable from society against transfer of building in FY 2014-15	6,35,35,454
Add: Recoverable from society towards principal repayment of loan taken for construction of building	1,90,27,765
Add: Recoverable from society towards interest payment on loan taken for construction of building	27,94,884
Add: Recoverable from society towards principal repayment of loans for purchase of vehicles (Rs. 1,98,66,713-Rs. 61,50,000)	1,37,16,713
Add: Recoverable from society towards interest paid on vehicle loans	23,83,013
Less: Provision for Gratuity and leave encashment as on 31.03.2017	73,06,388
Less: Provision for Salary as on 31.03.2017	1,08,98,592
Less: Fixed Deposit in the joint name of DDE District and School	12,22,885
Less: Caution money as on 31.03.2017	2,36,000
Less: Development Fund as on 31.03.2017	55,36,908
Total	**11,23,06,542**
Add: Fees for FY 2016-17 as per audited Financial Statements (we have assumed that the amount received in FY 2016-17 will at least accrue in FY 2017-18)	18,58,98,015
Add: Other income for FY 2016-17 as per audited Financial Statements (we have assumed that the amount received in FY 2016-17 will at least accrue in FY 2017-18)	15,28,724
Estimated availability of funds for FY 2017-18	**29,97,33,281**
Less: Budgeted expenses for the session 2017-18 (after making adjustment) Refer Note 1 to 3	21,89,90,471
Net Surplus	**8,07,42,810**

Note 1: The school has proposed Rs. 4,40,000 towards interest on vehicle loan in FY 2017-18, therefore, the same has not been considered in evaluation of fee increase proposal.

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Note 2: Under the following heads, the School has proposed expenditure in excess of 10% as compared to the actual expenditure incurred in FY 2016-17 and has also proposed new head of expenditures which was not there in FY 2016-17, for which the school has neither provided any reasons for such unusual increase nor provided any satisfactory justification. Therefore, the aforesaid expenditure in excess of 10% and expenditure under new heads have not been considered in the evaluation of fee increase proposal because FY 2017-18 is the year of implementation of 7th CPC where the parents/students are already overburdened.

(Figures Rs.)

Particulars	FY 2016-17	FY 2017-18	Net increase	% Change	Disallowed
Excursion expenses	17,715	11,00,000	10,82,285	6109%	10,80,514
Theatre expenses	9,97,375	27,50,000	17,52,625	176%	16,52,888
Software Expenses	12,44,316	27,50,000	15,05,684	121%	13,81,252
Advertisement expenses	15,56,900	55,00,000	39,43,100	253%	37,87,410
Other	6,84,868	16,50,000	9,65,132	141%	8,96,645
Musical Instruments	37,669	11,00,000	10,62,331	2820%	10,58,564
Student welfare expenses	4,36,596	27,50,000	23,13,404	530%	22,69,744
Aircon & BMS	-	11,00,000	11,00,000	100%	11,00,000
Curriculum development expenses	-	33,00,000	33,00,000	100%	33,00,000
Extra curriculum and activity exams	-	98,70,000	98,70,000	100%	98,70,000
Workshop & seminar expenses	-	1,10,00,000	1,10,00,000	100%	1,10,00,000
Total	**49,75,439**	**4,28,70,000**	**3,78,94,561**	**762%**	**3,73,97,017**

Note 3: The school has proposed Rs. 26,90,152 towards gratuity and leave encashment and Rs. 37,68,930 towards provision for salary in budget 2017-18 which has been considered in the evaluation of fee increase proposal because the school is having sufficient funds after considering all budgeted expenditures.

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ii. The school has sufficient funds to carry on the operation of the school for the academic session 2017-18 on the existing fees structure. In this regard, Directorate of Education has already issued directions to the schools vide order dated 16/04/2010 that,

"All schools must, first of all, explore and exhaust the possibility of utilising the existing funds/ reserves to meet any shortfall in payment of salary and allowances, as a consequence of increase in the salary and allowance of the employees. A part of the reserve fund which has not been utilised for years together may also be used to meet the shortfall before proposing a fee increase."

AND WHEREAS, in the light of above evaluation which is based on the provisions of DSEA, 1973, DSER, 1973, guidelines, orders and circulars issued from time to time by this Directorate, it was recommended by the team of expert Chartered Accountants that prima facie there are financial and other irregularities and also funds are available with the school on account of implementation of recommendations of 7th CPC and to carry out its operations for the academic session 2017-18, the fee increase proposal of the school may not be accepted.

AND WHEREAS, it is noticed that the school has incurred **Rs.12,21,41,503** for construction of building and repayment of loan taken for purchase of vehicles and construction of building together with interest paid thereon is in contravention of provisions of DSER, 1973 and other orders issued by the departments from time to time. Therefore, the school is directed to recover the aforesaid amount from society. The amount of receipts along with copy of bank statements showing receipt of above mentioned amount should be submitted with DoE, in compliance of the same, within sixty days from the date of issuance of this order. Non-compliance of this shall be taken up as per DSEA&R, 1973.

AND WHEREAS, since sufficient funds are available with school after meeting all expenditures for the year 2017-18, the school is hereby directed to make equivalent investments against the provision for Gratuity and Leave Encashment with LIC (or any other agency) within 90 days of the receipt of this order, so as to protect statutory liabilities. And School is also directed to make investments against the provision for salaries in the Joint name of Dy. Director Education and the Manager of the School in accordance with clause 10 of Form II of Delhi Right of Children to free and Compulsory Education Rules, 2011.

AND WHEREAS, the school is directed not to make any payment to society against unsecured loan of Rs. 7,69,72,402 outstanding in the name of society as on 31.03.2017 and treat it as a contribution from Society.

AND WHEREAS, recommendations of the team of expert Chartered Accountants along with relevant material were put before the Director of Education for consideration and who after considering all the material on the record and financial and other irregularities in the school found that sufficient funds are available with the school to meet its budgeted expenditure for the academic session 2017-18 including the impact of implementation of recommendations of 7th CPC. Therefore, Director (Education) has rejected the proposal of fee increase submitted by the said school.

Accordingly, it is hereby conveyed that the proposal of fee increase of **Max Fort School, Sector-23, Rohini, New Delhi - 110085 (School Id: 1413291)** is rejected by the Director of Education. Further, the management of said school is hereby directed under section 24(3) of DSEAR 1973 to comply with the following directions:

1. Not to increase any fee in pursuance to the proposal submitted by school for the academic session 2017-18 and if, the fee is already increased and charged for the academic session 2017-18, the same shall be refunded to the parents or adjusted in the fee of subsequent months.

2. To communicate the parents through its website, notice board and circular about rejection of fee increase proposal of the school by The Directorate of Education.

3. To ensure that the salaries and allowances shall come out from the fees whereas capital expenditure will be a charge on the savings in accordance with the principles laid down by Hon'ble Supreme Court of Delhi in its Judgment of Modern School vs Union of India. Therefore, school not to include capital expenditure as a component of fee structure to be submitted by the school under section 17(3) of DSEA, 1973.

4. To utilise the fee collected from students in accordance with the provisions of Rule 177 of the DSER, 1973 and orders and directions issued by this Directorate from time to time.

5. To remove all the financial and other irregularities as listed above and submit the compliance report within 30 days to the D.D.E (PSB).

6. In case of submission of any proposal for increase in fee for the next academic session, the compliance of the above listed financial and other irregularities will also be attached.

Non-compliance of this order or any direction herein shall be viewed seriously and will be dealt with the provision of Section 24(4) of DSEA, 1973 and DSER, 1973.

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This order is issued with the prior approval of the Competent Authority.

(YOGESH PRATAP)
Deputy Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi

To
The Manager/ HoS
Max Fort School,
Sector-23, Rohini,
New Delhi - 110085 (School Id: 1413291)

No. F.DE.15 (178)/PSB/2019/1080-1084 Dated: 14/3/2019

Copy to:

1. P.S. to Secretary (Education), Directorate of Education, GNCT of Delhi.
2. P.S. to Director (Education), Directorate of Education, GNCT of Delhi.
3. P.A. to Addl. Director of Education (Private School Branch), Directorate of Education, GNCT of Delhi.
4. DDE concerned
5. Guard file.

(YOGESH PRATAP)
Deputy Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi