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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 (123)/PSB/2019 1360-1364

Dated: 29/03/19

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

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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, **MBS International School, Sector-11, Dwarka, Delhi - 110075 (School Id: 1821259)** 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 April 05, 2018. Further, school was also provided opportunity of being heard on July 09, 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 clarifications 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 were evaluated thoroughly 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 and income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account. However following observations have been noted:
 - a. The school has utilised development fee for renovation of building for Rs. 51,64,989 in FY 2015-16 directly from the development fund. Further, as per reply submitted by the school in response of discussion held, it has clarified that the aforesaid expenditure was incurred for addition to the existing building and was in the nature of capital expenditure which is not appearing in the fixed assets schedule which mean school has under stated fixed assets in its financial statements. Thus, the amount of expenditure of Rs. 51,64,989 incurred by the school is in contravention of clause 14 of the order dated 11.0.2009 and accordingly the school is directed to make adjustment to Development Fund for amount of expenditure incurred by

school on additions to existing building. Moreover, the school is directed to prepare and present its financial statement in accordance with the generally accepted accounting principle for the next financial year.

Further as per clause 2 of the Public Notice dated 4 May 1997 state "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 incurred and borne by the society and by the school from the school fund. Further, 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". 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". As per Rule 177 of DSER, 1973 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 the specified education expenses. But the school has incurred expenditure for renovation of building which is of capital nature before making provision and earmarked investment for gratuity and leave encashment. Therefore, the school is directed to recover the amount incurred by the school on construction of building from the society.

- b. Further, the school has also utilised development fee for purchase of library books for Rs. 18,596 in FY 2014-15 and Rs. 1,34,208 in FY 2015-16 in contravention of clause 14 of the order dated 11.02.2009. Therefore, school is directed to make adjustment to Development Fund account and Development Fund utilised account for amount of library books purchased out of development fund. The details of amount utilised by the school for purchase of library books are as under:

(Figures in Rs.)			
Particulars	FY 2014-15	FY 2015-16	Total
Library Books	18,596	1,34,208	1,52,804

II. In respect of caution money the following has been observed:

- a. As per clause 18 of order no. F.DE. /15(56)/Act/2009/778 dated 11.02.2009, the school is required to refund the caution money collected along with interest to the students at the time of his/ her leaving from the school. The school is refunding the caution money to the student at the time of his/ her leaving without interest thereon.
- b. Further, as per Clause 4 of Order No.DE./15/150/ACT/2010/4854-69 dated 09.09.2010, the un-refunded caution money (if un-refunded for more than 30 days) belonging to ex-students shall be reflected as income for the next

financial year. The school has provided the amount of un-refunded caution money of Rs. 1,16,025 as on 31.03.2017, therefore the same has been considered in deriving funds availability position of the school.

- III. As per clause 2 of the Public Notice dated 4 May 1997 stated "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 had to be incurred and borne by the society and by the school from the school fund. Further, 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". 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". As per Rule 177 of DSER, 1973 income derived by an 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 the specified education expenses. Accordingly, based on the aforementioned public notice, High Court Judgment and Order of the Directorate, the expenditure relating to construction of Building is to be met by the society and not from the funds of the School.

As per the reply submitted by the school, the secured loan from Bank of India and unsecured loan from different persons were taken for infrastructure and development facility (including building) before FY 2014-15 but the actual amount utilised for construction of building were not provided by the school. The financial statement reflecting Rs. 6,21,02,080 (WDV) as on 01.04.2014 under the head building. Since, the building was constructed in contravention of the aforesaid provisions. Therefore, the school is directed to recover from the society repayment of loan and interest thereon during FY 2014-15 to 2016-17. Further, the school is directed to make adjustment to General Fund for the amount of interest paid on the aforesaid loan.

The details of principal repayment and interest payment on the loan is as under:

(Figures in Rs.)

Particulars	2014-15	2015-16	2016-17	Total
Principal repayment on Bank of India Term Loan	1,71,77,211	59,68,981	19,63,752	2,51,09,944
Principal repayment on Unsecured Loan	34,00,000	1,76,64,663	62,13,833	2,72,78,496
Interest on loan	-	95,13,337	22,06,853	1,17,20,190

Additionally, the school may be instructed not to repay outstanding balance of the aforesaid loan appearing as on 31.03.2017 which is Rs. 96,00,715 and

interest thereon as it is the society responsibility to repay the loan taken for construction of building.

- IV. In respect of earmarked levies, school is required to adhere with:
- 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, during FY 2014-15, 2015-16 and 2016-17, the school is charging earmarked levies namely Transport fee, Lab fee and Computer fee but these fees are not charged on 'no profit no loss' basis as the school has earned surplus from Transport fee and Computer fee and has incurred deficit from Lab fee. Further, the school is not following fund based accounting in respect of these earmarked levies. Therefore, the school is directed to make adjustment to General Fund for surplus/ deficit incurred on these earmark levies.

Other Irregularities:

- I. As per Para 99 of Guidance note on "Accounting by School" issued by ICAI, relating to restricted fund, "Where the fund is meant for meeting capital expenditure, upon incurrence of the expenditure, the relevant asset account is debited which is depreciated as per the recommendations contained in this Guidance Note. Thereafter, the concerned restricted fund account is treated as deferred income, to the extent of the cost of the asset, and is transferred to the credit of the income and expenditure account in proportion to the depreciation charged every year".

Taking cognizance from the above para, it has been observed that school has not treated the designated fund account as deferred income to the extent of cost of assets purchased out of development fund and has not transferred any amount to the credit of Income & Expenditure account in proportion to the depreciation charged. Therefore, school is directed to follow Guidance Note-21.

- II. On review of financial statements for FY 2016-17, it has been noted that fixed assets purchased out of general fund are shown at WDV and fixed assets purchased out of development fund are shown at the gross value. Therefore, school is directed to follow uniform practice for presentation of fixed assets.
- III. As per DOE order No.F.DE.15/Act-I/08155/2013/5506-5518 dated 04.06.2012 as well DDA land allotment letter, the school shall provide 25% reservation to children belonging to EWS category. However, the school has not complied with above requirement in the FY 2014-15, FY 2015-16 and FY 2016-17. Therefore, DDE District is directed to look into this matter. The details of total students and EWS students for the FY 2014-15, 2015-16 & 2016-17 are given below.

Particulars	2014-15	2015-16	2016-17
Total strength	707	902	947
EWS students	15	35	48
Ratio of EWS student to total strength	2%	4%	5%

- IV. As per the condition of Land allotment letter, the School shall not increase the rate of any fee without prior sanction of the Directorate of Education and shall follow the provisions of Delhi Education Act/ Rules, 1973 and other instruction issued from time to time. Accordingly, the Directorate of Education sought online proposals from the Schools which was allotted land by Land owning agencies having condition of obtaining prior approval from the Directorate of Education vide Order No. F. DE-15/ACT-IWPC-5256/16/9352/-9359 dated 16.04.2016. However, on review of the fee receipts provided by the school it has been observed that the school had increased the fee in all heads in FY 2016-17 without obtaining prior approval from Directorate of Education. Therefore, the school is directed to roll back the increase fee or adjust the excess amount collected by the school against the fee receivable from the students.

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. **16,56,75,491** out of which cash outflow in the year 2017-18 is estimated to be Rs. **8,63,76,262**. This results in net surplus of amounting to Rs. **7,92,99,229**. The details are as under:

Particulars	Figures (Rs.)
	Amount
Cash and Bank balances as on 31.03.17 as per audited Financial Statements	70,29,333
Investments as on 31.03.17 as per audited Financial Statements	3,46,891
Less: Fixed Deposit in joint name of Dy Director of Education and School	(3,46,891)
Add: Amount recoverable from society against upgradation of building in FY 2015-16	51,64,989
Add: Amount recoverable from society against principal repaid during FY 2014-15, 2015-16 and 2016-17 on secured loan taken for upgradation of building	2,51,09,944
Add: Amount recoverable from society against principal repaid during FY 2014-15, 2015-16 and 2016-17 on unsecured loan taken for upgradation of building	2,72,78,496
Add: Amount recoverable from society against interest paid during FY 2014-15, 2015-16 and 2016-17 on loan taken for upgradation of building	1,17,20,190
Add: Unrefunded caution money treated as income	1,16,025
Less: Development Fund as on 31.03.2017	(6,22,257)
Less: Caution money balance as on 31.03.2017	(5,67,025)

Particulars	Amount
Total	7,52,29,695
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)	8,99,07,776
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)	5,38,020
Estimated availability of funds for FY 2017-18	16,56,75,491
Less: Budgeted expenses for the session 2017-18 (after making adjustment) Refer Note 1 & 2	8,63,76,262
Net Surplus	7,92,99,229

Note 1: The school has proposed Rs.1,24,89,864 for salary arrears which comes 60% over the previous year salaries expenditure. This gap is huge as the school was paying Dearness Allowance @ 80% of basic salary instead of 125% under 6th CPC. Therefore, arrears under 7th CPC has been restricted to 30% of the previous year salary expenditure and excess amount of Rs. 62,47,738 has been disallowed. [Rs.1,24,89,864 – (2,08,07,088*30%)]

Note 2: The school has proposed interest on loan of Rs. 1,14,59,000 in budget for FY 2017-18 which has not been considered for evaluation of fee increase proposal.

- 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, 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, the fee increase proposal of the school may not be accepted.

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, 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 **MBS International School, Sector-11, Dwarka, Delhi - 110075 (School Id: 1821259)** 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 on any account including implementation of 7th CPC 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 remove all the financial and other irregularities/violations as listed above and submit the compliance report within 30 days from the date of issue of this order to the D.D.E (PSB).
4. 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.
5. 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.
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.

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

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To
The Manager/ HoS
MBS International School,
Sector-11, Dwarka
Delhi – 110075, (School Id: 1821259)

No. F.DE.15 (123)/PSB/2019 1360-1364

Dated: 29/03/19

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