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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 ( 672)/PSB/2018/30843-47

Dated: 24/12/18

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, **Banyan Tree School, 3 Lodhi Institutional Area, New Delhi - 110003 (School Id: 1924143)** had submitted the proposal for increase in fee for the academic session 2017-18 including the impact on account of implementation of recommendations of 7<sup>th</sup> 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 30, 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. In respect of earmarked levies, school is required to comply 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 & 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 in the name of transport fee, computer fee and science fee but these fees are not charged on 'no profit no loss' basis as the school is either earning surplus or incurring deficit from these levies. During the period under evaluation, school has earned surplus on account of computer fee and incurred deficit in respect of transport fee and science fee. Therefore, the school is directed to make necessary adjustment in Reserves & surplus for surplus/ deficit earned out of these earmarked levies.

- II. As per Section 18(4) of DSEA, 1973, income derived by Unaided Recognized School by way of fees should be utilized only for educational purposes as prescribed under Rules 176 and 177 of the DSER, 1973. As per Rule 177 of DSER, 1973 income derived by an Unaided Recognized School 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 may be utilized for capital or contingent expenditure of the school. The school has bought Luxury Car Honda city and Honda Mobilio by taking secured loan from Kotak Mahindra Bank in FY 2015-16 despite of having Car worth of Rs. 26,74,050 as on 01.04.2015 in the financial statement. Therefore, the need of buying additional car is not justify and accordingly the school is directed to recover the amount of expenditure incurred on buying new car along with interest paid on loan from the society.

(Figures in Rs.)

Particulars	Amount
Purchase cost of Honda city car	10,80,409
Purchase cost of Honda Mobilio car	8,37,950
<b>Total recoverable</b>	<b>19,18,359</b>

(Figures in Rs.)

Particulars	Amount
Total interest on loan taken from HDFC Bank	1,93,899
<b>Total recoverable</b>	<b>1,93,899</b>

- III. As per clause 14 of order no. F.DE. /15(56)/Act/2009/778 dated 11.02.2009, and Clause 7 of Order No. DE 15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 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, on review of the financial statement of the school for FY 2014-15 to 2016-17, the following has been observed.

- a. In FY 2015-16, the school has appropriated for Contingency Fund (Anil Dev Committee), Provision for Salary Arrears and Accumulated Losses out of the development fund account in contravention of clause 14 of the order dated 11.02.2009. Therefore, the school is directed to make adjustment in development fund account for the amount appropriated for Contingency Fund (Anil Dev Committee), Provision for Salary Arrears and Accumulated Losses

(Figures in Rs.)

Particulars	FY 2015-16
Contingency fund	91,58,000
Provision for salary arrears	63,97,837
Accumulated losses	1,11,15,301
<b>Total</b>	<b>2,66,71,138</b>

- b. The school has also utilized development fund in FY 2015-16 for purchase of library books amounting to Rs.1,33,329 in contravention of clause 14 of the order dated 11.02.2009. Therefore, school is directed to make adjustment in

development fund and reserves & surplus for purchase of library books out of development fund.

- c. The school has directly utilised Development Fund for repairs, renovation and construction of building in FY 2014-15, 2015-16 and 2016-17 in contravention of clause 14 of the order dated 11.02.2009. But the same is not reflecting as addition under the head of building in the financial statements. Therefore, school is directed to prepare and present this addition in the financial statements and submit complete details of expenditures incurred to Directorate of Education. In case if the school fails to comply the aforesaid direction, Rs. 2,20,30,136 shall be treated as diversion of funds and shall be dealt with accordingly in the evaluation of fee increase proposal of the ensuing year. Details of expenditure incurred by the school is as under:

(Figures in Rs.)

Particulars	2014-15	2015-16	2016-17	Total
Utilisation of development fund	57,92,850	47,60,518	1,14,76,768	2,20,30,136

- IV. As per Clause 8 of order No. DE 15/ Act/ Duggal.Com /203 /99 /23033-23980 dated 15.12. 1999, Clause 23 of Order No. F.DE./15(56)/Act/2009/778 dated 11.02.2009 and Section 18(4) of DSEA, 1973 read along with Rule 176 and 177 of Delhi School Education Rules, 1973 states that "Fees/funds collected from the parents/students shall be utilised strictly in accordance with rules 176 and 177 of the Delhi School Education Rules, 1973. No amount whatsoever shall be transferred from Private Recognized Unaided School Fund to the society or the trust or any other institution."

The above position was subsequently amended through judgement of the Supreme Court in the matter of Action Committee, Un-Aided Private, Schools & Ors. vs Director of Education, Delhi & Ors. on 07.08.2009, whereby words "except under the management of the same society or trust" were added to the last sentence of the above para. Thus, the new sentence is read as follows;  
*"No amount whatsoever shall be transferred from the recognized unaided school fund of a school to the society or the trust or any other institution except under the management of the same society or trust."*

However, on review of the financial statement the following has been observed:

- a. The school transferred Rs.2,24,38,323 to Banyan Tree School Jagdishpur for construction of Building in FY 2015-16 which was subsequently squared off against the Liability of Society appearing in the financial statement. This liability was created against the transfer of Building from Society to School accounts. Thus, the aforesaid transfer of Rs.2,24,38,323 is in contravention of clause 8 of order No. DE 15/ Act/ Duggal.Com /203 /99 /23033-23980 dated 15.12. 1999. Therefore, the school is directed to recover the said amount from the Society.



- b. Further, in FY 2014-15 the school advanced Rs. 63,81,352 to the following schools for construction of building which was got recovered in FY 2017-18 by the school. Since, the school has recovered this amount. Therefore the same has been included in the fund availability of the school in evaluation of fee increase proposal of FY 2017-18. The summary of the school transferred and received as under:

(Figures in Rs.)

Particulars	2014-15	Date of refund as per bank statement
Banyan Tree School, Bhopal	37,01,746	20.11.2017
Banyan Tree School, Lucknow	25,14,719	20.11.2017
IILM, PGP	1,64,887	31.03.2018
<b>Total</b>	<b>63,81,352</b>	

- c. As per AS-15 'Employee Benefit' issued by ICAI. "An entity should determine the present value of defined benefit obligations and their fair value of any plan asset so that the amounts recognised in the financial statement do not differ materially from the amounts that would be determined at the balance sheet date. As per the explanation provided by the school, Rs. 2,00,00,000 was transferred to Society in FY 2016-17 for meeting Gratuity Liability of the school as and when required which is not as per the provision of AS-15. Therefore, school is directed to recover Rs. 2,00,00,000 from the society. Further, the school is directed to take appropriate steps to determine and earmark fund for gratuity in accordance with the provisions of AS-15.
- V. The school has advanced of Rs. 12,00,000 to the Manager of the school in FY 2016-17. Out of which school has already recovered Rs. 8,59,313 (as per bank statement provided by the school) on 20 Nov, 2017. Therefore, Rs. 8,59,313 has been included in the fund availability of the school.

#### Other Irregularities:

- I. As per sub-section (1) of section 13 of Right to Education Act, 2009, no school or person shall while admitting a child, collect any capitation fee. On review of fee structure for FY 2015-16 and 2016-17, it has been observed that the school is collecting one time charge of Rs. 15,000 and Rs. 40,000 in the name of "IT establishment, upgrading, maintenance charges" and "Operational/miscellaneous and orientation expenses" respectively at the time of admission from the new student. This type of collection by the school from the student clearly tantamount as capitation fee. Therefore, the school is directed to stop collection of such onetime charges from the student.
- II. In its budget for the FY 2017-18, school has proposed higher increase in some of the expenditure as compared to the previous year expenditure. Therefore, the school is required to look into and monitor these unusual expenditure. Following are the some of the expenses for instances

(Figures in Rs.)

Particulars	As per audited Income and Expenditure Account for FY 2016-17	As per budget for fee increase submitted by school for FY 2017-18	Net Increase/ (Decrease)	% Change	Disallowance
Institutional expenses	1,13,20,485	1,50,00,000	36,79,515	33%	25,47,467
Repair & maintenance expenses	17,65,706	69,20,000	51,54,294	292%	49,77,723
<b>Total</b>	<b>1,30,86,191</b>	<b>2,19,20,000</b>	<b>88,33,809</b>	<b>68%</b>	<b>75,25,190</b>

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. 18,31,12,720 out of which cash outflow in the year 2017-18 is estimated to be Rs. 12,01,94,946. This results in net surplus of amounting to Rs. 6,29,17,774. The details are as follows:

(Figures in Rs.)

Particulars	Amount	Remarks
Cash and Bank balances as on 31.03.17 as per audited Financial Statements	1,77,06,923	
Investments as on 31.03.17 as per audited Financial Statements	89,80,172	
Add: Recoverable against purchase cost of Honda city and Honda mobilio taken on loan from Kotak Mahindra Bank in FY 2015-16 in contravention of section 18(4) and rule 177 of DSER, 1973	19,18,359	
Add: Recoverable against interest paid on loan taken from Kotak Mahindra Bank for purchase of Honda city and Honda mobilio in FY 2015-16 in contravention of section 18(4) and rule 177 of DSER, 1973	1,93,899	

Particulars	Amount	Remarks
Add: Recoverable from society in contravention to the clause 8 of order No. DE 15/ Act/ Duggal.Com /203 /99 /23033-23980 dated 15.12. 1999, Clause 23 of Order No. F.DE./15(56)/Act/2009/778 dated 11.02.2009 and Section 18(4) of DSEA, 1973	2,24,38,323	
Add: Recovered in FY 2017-18 from other schools to whom funds have been transferred for their building construction in contravention of clause 8 of order No. DE 15/ Act/ Duggal.Com /203 /99 /23033-23980 dated 15.12. 1999, Clause 23 of Order No. F.DE./15(56)/Act/2009/778 dated 11.02.2009 and Section 18(4) of DSEA, 1973	63,81,352	
Add: Recoverable from society in contravention to the clause 8 of order No. DE 15/ Act/ Duggal.Com /203 /99 /23033-23980 dated 15.12. 1999, Clause 23 of Order No. F.DE./15(56)/Act/2009/778 dated 11.02.2009 and Section 18(4) of DSEA, 1973	2,00,00,000	
Add: Recovered from manager of school in FY 2017-18 against advance	8,59,313	
<b>Total</b>	<b>7,84,78,341</b>	
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)	9,97,03,344	
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)	49,31,035	
<b>Estimated availability of funds for FY 2017-18</b>	<b>18,31,12,720</b>	
Less: Budgeted expenses for the session 2017-18 (after making adjustments)	12,01,94,946	Refer Note 1 & 2
<b>Net Surplus</b>	<b>6,29,17,774</b>	

**Note 1:** The Provision for gratuity amounting to Rs. 50,00,000 has not been considered in the budget for FY 2017-18, since the same is not supported by actuarial valuation report.

**Note 2:** The school has proposed capital expenditure amounting to Rs. 30,00,000 for construction building in budget 2017-18 which has not been considered in the 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 7<sup>th</sup> 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 7<sup>th</sup> 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 **Banyan Tree School, 3 Lodhi Institutional Area, New Delhi - 110003 (School Id: 1924143)** 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:

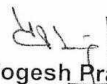
1. Not to increase any fee in pursuance to the proposal submitted by school on any account including implementation of 7<sup>th</sup> CPC for the academic session 2017-18 and if, the fee is already increased and charged for the academic session 2017-18, the same shall be refunded to the parents or adjusted 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

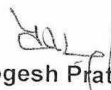
To  
The Manager/ HoS  
Banyan Tree School,  
3 Lodhi Institutional Area  
New Delhi - 110003 (School Id: 1924143)

No. F.DE.15 (672)/PSB/2018 /30843-47

Dated: 24/12/18

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