

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

No. F.DE.15(66)/PSB/2019/ 1706-1710

Dated: 06/03/2020

ORDER

WHEREAS, every school is required to file a statement of fees every year before the ensuing academic session under section 17(3) of the Delhi School Education Act, 1973 (hereinafter read as '**the Act**') with the Director. Such statement will indicate estimated income of the school derived from fees, estimated current operational expenses towards salaries and allowances payable to employees in terms of Rule 177(1) of the Delhi School Education Rules, 1973 (hereinafter read as '**the Rules**'). Such estimate will also provision for donation, gratuity, reserve fund and other items under rule 177(2) and savings thereafter, if any, in terms of the proviso to the rule 177(1).

AND WHEREAS, as per section 18(5) of the Act read with section 17(3), 24 (1) of the Act and Rule 180 (3) of the DSEA & R, 1973 responsibility has been conferred upon to the Director (Education) to examine the audited financial, account and other records maintained by the school at least once in each financial year. The section 18(5) and Section 24(1) of the Act and Rule 180 (3) have been reproduced as under:

Section 18(5) : '*the managing committee of every recognised private school shall file every year with the Director such duly audited financial and other returns as may be prescribed, and every such return shall be audited by such authority as may be prescribed*'

Section 24(1) : '*every recognised school shall be inspected at least once in each financial year in such manner as may be prescribed*'

Rule 180 (3) : '*the account and other records maintained by an unaided private school shall be subject to examination by the auditors and inspecting officers authorised by the Director in this behalf and also by officers authorised by the Comptroller and Auditor-General of India.*'

AND WHEREAS, besides, the Hon'ble Supreme Court in the judgment dated 27 Apr 2004 passed in Civil Appeal No. 2699 of 2001 titled Modern School Vs. Union of India and others has conclusively decided that under section 17(3), 18(4) read along with rule 172, 173, 175 and 177 of the Rules, Director of Education has the authority to regulate the fee and other charges to prevent the profiteering and commercialization of education.

AND WHEREAS, it was also directed by the Hon'ble Supreme Court to the Director of Education in the aforesaid matter titled Modern School Vs. Union of India and others in Para 27

and 28 in case of Private unaided Schools situated on the land allotted by DDA at concessional rates that:

"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 High Court of Delhi vide its judgement dated 19 Jan 2016 in writ petition No. 4109/2013 in the matter of Justice for All versus Govt. of NCT of Delhi and others has reiterated the aforesaid directions of the Hon'ble Supreme Court and has directed the Director of Education to ensure the compliance of term, if any, in the letter of allotment regarding the increase of the fee by all the recognized unaided schools which are allotted land by DDA.

AND WHEREAS, accordingly, this Directorate vide order No. F.DE.15 (40)/PSB/2019/2698-2707 dated 27 Mar 2019, directed that all the Private Unaided Recognized Schools running on the land allotted by DDA/other Govt. agencies on concessional rates or otherwise, with the condition to seek prior approval of Director of Education for increase in fee, are directed to submit their proposals, if any, for prior sanction of DoE for increase in fee for the session 2018-2019 and 2019-2020.

AND WHEREAS in response to this directorate's circular dated 27 Mar 2019 referred to above, **Banyan Tree School (School ID-1924143), Lodhi Road, New Delhi** submitted its proposal for enhancement of fee for the academic session 2019-2020 in the prescribed format.

AND WHEREAS, in the process of examination of fee hike proposal filed by **Banyan Tree School (School ID-1924143), Lodhi Road, New Delhi** for the academic session 2019-2020, necessary records and explanations were called from the school through email. Further, school was also provided an opportunity of being heard on 11 Dec 2019 at 12:00 PM to present its justifications/ clarifications on fee increase proposal including audited financial statements and based on the discussion, 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 all subsequent documents submitted by the school were thoroughly evaluated and key findings noted are as under:

A. Financial Discrepancies

1. As per direction no. 2 included in the Public Notice dated 4 May 1997, *"it is the responsibility of the society who has established the school to raise such 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"*. Additionally, Hon'ble High Court of Delhi in its judgement dated 30 Oct 1998 in the case of Delhi Abibhavak Mahasangh concluded that *"The tuition fee cannot be fixed to recover capital expenditure to be incurred on the properties of the society."* Also, Clause (vii) (c) 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 the financial fee structure."*

Accordingly, based on the aforementioned public notice and High Court judgement, the cost relating to land and construction of the school building has to be met by the society, being the property of the society and school funds i.e. fee collected from students is not to be utilised for the same except in compliance with Rule 177 of DSER, 1973. Based on the fact that the school did not even get its liability towards retirement benefits (gratuity and leave encashment) of staff valued from an actuary in accordance with the requirements of Accounting Standard 15 till 22 Jan 2019 i.e. the first time actuarial valuation was obtained, the school did not comply with the requirements of Rule 177 (1) i.e. *"Income derived by an unaided utilized school by way of fees shall be utilized in the first instance, for meeting the pay, allowances, and other benefits admissible to the employees of the school. Provided that savings, if any from the fees collected by such school may be utilised by its managing committee for meeting for meeting the capital or contingent expenditure of the school....."*

(2) The savings referred to in sub-rule (1) shall be arrived at after providing for the following, namely: (b) the needed expansion of the school or any expenditure of a development nature,...."

Directorate's order No. F.DE.15(672)/PSB/2018/30843-47 dated 24 Dec 2018 issued to the school post evaluation of fee hike proposal for FY 2017-2018 noted that the audited financial statements of the school for the FY 2014-2015, FY 2015-2016 and FY 2016-2017 revealed that the school has incurred expenditure on construction of school building out of development fund. It was also noted that the school has continued its practice and has incurred expenditure on development of building during FY 2017-2018 and FY 2018-2019. On further analysis, it was noted that while the school was charging expense in the nature of repair and maintenance in the Income and Expenditure Account, it had utilised development fund for development of building, which is a non-compliance of Clause 14 of Order No. F.DE./15 (56)/ Act/2009/778 dated 11 Feb 2009 that states *"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..."* Further, this expenditure on development of building was adjusted against development fund and was neither reported as revenue expense nor as capital expenditure (however, in the fixed assets schedule enclosed with the audited financial statements for FY 2017-2018 and FY 2018-2019, the developmental

expenditure was reported as additions to fixed assets with corresponding adjustment against development fund. Thus, with no impact on the fixed assets). Details of expense incurred by the school on development of building and that as repair and maintenance during FY 2014-2015 to FY 2018-2019 are as under:

Financial Year	Developmental Expenditure on Building utilised from Development Fund (INR)	Repair and Maintenance Expense as per Income and Expenditure Account (INR)
2014-2015	58,39,863	51,79,222
2015-2016	92,74,870	32,86,798
2016-2017	1,15,40,598	17,65,706
2017-2018	58,32,101	21,70,260
2018-2019	1,07,53,518	30,50,656
Total	4,32,40,950	1,54,52,642

Thus, based on the fact that developmental expenditure was incurred by the school without ensuring compliance of Rule 177, expenditure not routed through Income & Expenditure or Fixed Assets Schedule, these expenditures being over and above regular repair and maintenance expense reported by the school indicate that these expenditures were of capital/developmental nature. Thus, the amount spent by the school on development of building by utilising development fund of INR 4,32,40,950 in the aforementioned financial years without complying with the requirements of Rule 177 and mis-utilising development fund is liable to be recovered from the Society.

Therefore, the amount of INR 4,32,40,950 is hereby added to the fund position of the school (enclosed in the later part of this order) considering the same as funds available with the school and with the direction to the school to recover this amount from the Society within 30 days from the date of this order.

Also, based on above, an amount of INR 34 lakhs budgeted by the school towards renovation of building during FY 2019-2020 has been adjusted from the budgeted expenses of FY 2019-2020 while deriving the fund position of the school (enclosed in the later part of this order).

- As per the Directorate's Order No. DE 15/Act/Duggal.Com/203/99/23033-23980 dated 15 Dec 1999, the management is restrained from transferring any amount from the recognized unaided school fund to society or trust or any other institution. The Supreme Court also through its judgement on a review petition in 2009 restricted transfer of funds to the society.

Further, Rule 177 of DSER, 1973 states "(1) Income derived by an unaided recognised school by way of fees shall be utilised in the first instance, for meeting the pay, allowances, and other benefits admissible to the employees of the school. Provided that savings, if any from the fees collected by such school may be utilised by its managing committee for meeting for meeting

the capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely:

- award of the scholarships to students,
- establishment of any other recognised school, or
- assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run.

(2) The savings referred to in sub-rule (1) shall be arrived at after providing for the following, namely:-

- (a) pension, gratuity and other specified retirement and other benefits admissible to the employees of the school,
- (b) the needed expansion of the school or any expenditure of a development nature,
- (c) the expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion or construction of any building or establishment of hostel or expansion of hostel accommodation,
- (d) co-curricular activities of the students,
- (e) reasonable reserve fund, not being less than ten percent, of such savings."

Based on the above provisions, Directorate through its order No F.DE.15(672)/PSB/2018/30843-47 dated 24 Dec 2018 directed the school to recover INR 2,00,00,000 from the society together with an amount of INR 2,24,38,323 given to Banyan Tree School, Jagdishpur for construction of building in FY 2015-2016 which was subsequently squared off against the liability of society appearing in the financial statements. These transfer of funds by the school to the Society were not in compliance with the provisions of the Directorate's Order dated 15 Dec 1999 and judgement of the Hon'ble Supreme Court of India, while the transfer to another school under the management of the Society was done without ensuring compliance with the provisions of Rule 177, as the school did not provide for its liability towards staff retirement benefits.

Based on the documents provided by the school, the school has recovered INR 50 lakhs from the society during FY 2018-2019, but is yet to recover the remaining amount of INR 1.5 crores transferred to the society and the amount of INR 2,24,38,323 given to Banyan Tree School, Jagdishpur. Thus, the amount of INR 1.5 crores and INR 2,24,38,323 are hereby added to the fund position of the school (enclosed in the later part of this order) considering the same as funds available with the school and with the direction to the school to recover the remaining amount from the Society within 30 days from the date of this order.

3. Para 57 of Accounting Standard 15 - 'Employee Benefits' issued by the Institute of Chartered Accountants of India states "An enterprise should determine the present value of defined benefit obligations and the fair value of any plan assets with sufficient regularity that the amounts recognised in the financial statements do not differ materially from the amounts that would be determined at the balance sheet date." Further, according to para 7.14 of the Accounting Standard 15, "Plan assets comprise:

- assets held by a long-term employee benefit fund; and
- qualifying insurance policies."

Also, Directorate's order No F.DE.15(672)/PSB/2018/30843-47 dated 24 Dec 2018 issued to the school post evaluation of fee hike proposal for FY 2017-2018 directed the school to take appropriate steps to determine the liability and earmark funds for gratuity and leave encashment liability in accordance with the provisions of AS-15.

While the school has obtained actuarial valuation report dated 22 January 2019, regarding its liability towards retirement benefits as on 31 Mar 2018, the provisions towards gratuity and leave encashment created by the school in its financial statements for FY 2017-2018 were not in agreement with the actuarial valuation report. On review of the audited financial statements for FY 2017-2018, it was noted that the school had recorded liability of INR 1,90,46,719 and INR 57,60,228 towards gratuity and leave encashment for the FY 2017-2018, however, total liability towards gratuity and leave encashment as per the actuarial valuation report was INR 1,52,08,484 and INR 46,98,513, which resulted in excess recording of liability of INR 38,38,235 and INR 10,61,715 respectively.

During personal hearing, the school agreed that excess liability of INR 48,99,950 (in totality) was recorded in its books of account and agreed to rectify the same ensuring the amounts of provisions are equivalent to liability determined by the actuary.

Though the school has obtained actuarial valuation report in respect of gratuity and leave encashment, it has not deposited any amount in investments that qualify as plan assets though the school was directed through Directorate's order No F.DE.15(672)/PSB/2018/30843-47 dated 24 Dec 2018 to earmark funds towards gratuity and leave encashment.

Since no investments have been made by the school in plan assets, the liability determined by the actuary has not been considered while deriving the fund position of the school (enclosed in the later part of this order). Further, the school is directed to start depositing the amount of liability arrived by the actuary in investments that qualify as plan assets as per Accounting Standard 15 within 30 days from the date of this order to protect statutory liabilities towards school staff.

4. Directorate's order No. F.DE.15(672)/PSB/2018/30843-47 dated 24 Dec 2018 issued to the school post evaluation of fee hike proposal for FY 2017-2018 noted that school has advanced INR 12,00,000 to the Manager of the school in FY 2016-17 out of which school has already recovered INR 8,59,313 (as per bank statement provided by the school) on 20 Nov 2017.

The school did not submit any evidence of receipt of the aforesaid amount. Further, during personal hearing the school mentioned that the Manager of the School has been charged with effect from 18 April 2019. It was further mentioned that the newly appointed Manager was working as Director in the school previously. The school provide ledger account of the Manager appointed during FY 2019-2020 and from the ledger so provided by the school, it was noted that the school is paying INR 1,20,000 per month as consultancy charges to the

manager of the school. The ledger account also reflected opening balance payable to the Manager as on 31 Mar 2019 indicating that the school was paying remuneration to the Director, which is not an approved position as per Recruitment Rules. However, the school did not provide details of amount paid to the Director before being appointed as the Manager. Thus, the amount paid to the Director could not be quantified.

Since the Manager of the school is not entitled to any payment whatsoever from the school funds, the balance amount of INR 3,40,687 recoverable from the previous Manager of the School has been included in the fund position of the school (enclosed in the later part of this order) with the direction to the school to recover the remaining amount from the Manager within 30 days from the date of this order.

Also, based on above, an amount of INR 14.4 lakhs budgeted by the school towards payment to Manager during FY 2019-2020 has been adjusted from the budgeted expenses of FY 2019-2020 while deriving the fund position of the school (enclosed in the later part of this order) with the instruction to the school to recover the amount paid as remuneration or consultancy fee being paid to the Manager within 30 days from the date of this order.

Further, the school is directed to quantify the amount paid to the Director prior to FY 2019-2020, recover that amount within 30 days from the date of this order and not to advance any amount or make any payment to the Director or Manager of the School subsequently.

5. From the financial statements of the school for FY 2017-2018 and FY 2018-2019, it was noted that the school has engaged in profiteering and commercialisation of education by way of charging additional fee for smart classes from students of the school and collecting increased/excessive annual charges.

Based on the information provided submitted by the school, it collected an amount of INR 56,20,034 in the name of Computer/ Smart Class fee (a new fee head) during FY 2017-2018 whereas it incurred an expense of INR 1,54,704. Again, during FY 2018-2019, it collected 44,95,194 from students and spent INR 2,59,897. Thus, resulting in multi-fold surplus for the school. Thus, levy of additional fee towards smart class is not justified in view of provision of the service to most of the students of the schools and fee charged in comparison with the expense incurred.

Thus, the school is directed to refund/adjust smart class fee collected from students during FY 2017-2018 and thereafter. Based on the financial statements submitted by the school, it collected INR 56,20,034 and INR 44,95,194 towards smart class fee during FY 2017-2018 and FY 2018-2019 respectively. Therefore, amount of INR 1,46,10,422 (i.e. INR 56,20,034 for FY 2017-2018 plus INR 44,95,194 for FY 2018-2019 plus INR 44,95,194 for FY 2019-2020 [considering same income as that of FY 2018-2019 during FY 2019-2020]) is hereby adjusted from the available funds while deriving the fund position of the school for the FY 2019-2020 with the direction to the school immediately refund/adjust this amount of additional fee collected from students during FY 2017-2018 to FY 2019-2020 and submit evidence of

refund/adjustment to the Directorate within 30 days from the date of this order. Further, the school is directed not to levy any new fee/charge without approval from the Directorate.

It was further noticed that the school has collected increased/ excessive annual charges from the students during FY 2018-2019 and FY 2019-2020 in comparison to FY 2017-2018. Based on the fee structure submitted by the school, it was noted that the school has made an average increase of approx. 37% and 147% in annual charges during FY 2018-2019 and FY 2019-2020 in comparison to FY 2017-2018 respectively. Based on the details available on record, annual charges collected in FY 2017-2018, FY 2018-2019 and FY 2019-2020 are as under:

Class	FY 2017-2018	FY 2018-2019	FY 2019-2020	% Increase in FY 2018-2019	% Increase in FY 2019-2020
	A	B	C	(B-A)/A	(C-A)/A
Nursery-Class II	9,950	13,550	24,350	36%	145%
Class III	9,800	13,600	24,400	39%	149%
Class IV	10,000	13,600	24,200	36%	142%
Class V-X	9,800	13,400	24,200	37%	147%
Class XI-XII	8,900	12,500	23,300	40%	162%

The school did not provide the amount of exact increased annual charges collected from students during FY 2018-2019 and FY 2019-2020. Thus, based on the percentage derived above for increase in annual charges, the school increased annual charges at an average of approx. 37%, which when calculated based on the fee collected by the school amounts to INR 45 lakhs approx. Since the above amount is calculated based on approximation and exact amount of excess fee collected by school could not be derived on account of non-submission of requisite information by the school, no adjustment is reflected in the fund position of the school enclosed in the later part of this order).

Since the school has engaged in profiteering by commercialisation of education, which is indicated with the amount of surplus funds derived post preparation of the fund position of the school (enclosed in the later part of this order), the school is hereby directed to immediately refund/adjust the increased amount of annual charges collected from students during FY 2018-2019 to FY 2019-2020 and submit evidence of refund/adjustment to the Directorate within 30 days from the date of this order. Further, the school is directed not to increase any fee/charge without approval from the Directorate.

- Clause 14 of this Directorate's Order No. F.DE./15 (56)/ Act/2009/778 dated 11 Feb 2009 states "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 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."

As per Order No. F.DE-15/ACT-I/WPC-4109/Part/13/7905-7913 dated 16 April 2016 "The Director hereby specify that the format of return and documents to be submitted by schools under rule 180 read with Appendix-II of the Delhi School Education Rules, 1973 shall be as per format specified by the Institute of Chartered Accountants of India, established under Chartered Accountants Act, 1949 (38 of 1949) in Guidance Note on Accounting by Schools (2005) or as amended from time to time by this Institute."

Para 99 of Guidance Note on Accounting by Schools (2005) issued by the Institute of Chartered Accountants of India states "Where the fund is meant for meeting capital expenditure, upon incurrance 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." Further, Para 102 of the aforementioned Guidance Note states "In respect of funds, schools should disclose the following in the schedules/notes to accounts: (a) In respect of each major fund, opening balance, additions during the period, deductions/utilisation during the period and balance at the end;

(b) Assets, such as investments, and liabilities belonging to each fund separately;

(c) Restrictions, if any, on the utilisation of each fund balance;

(d) Restrictions, if any, on the utilisation of specific assets."

Directorate's order no F.DE.15 (672)/PSB/2018/30843-47 dated 24 Dec 2018 issued to the school post evaluation of the proposal for enhancement of fee for FY 2017-2018 noted that in FY 2015-2016 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 Feb 2009. Therefore, the school was 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, the effect of which has not been taken by the school.

The school has continued to mis-utilize development fund for the development of school building during FY 2017-2018 and FY 2018-2019, which is in contravention of the above-mentioned provisions since development fund can be utilized only towards purchase, upgradation and replacement of furniture, fixture and equipment. Refer Financial Finding No. 1 for more details.

While the school is presenting development fee as capital receipt, it is not creating Deferred Income/ development fund Utilised equivalent to the amount of development fund utilised it instead the school adjusted the expenditure directly from the development fund account without any corresponding increase in fixed assets. Thus, the accounting treatment and presentation of the development fund by the school is not in accordance with Para 99 of the Guidance Note.



Also, the school has not segregated the funds collected by it towards development fee from students and the same are not represented by separate bank account/ fixed deposits. In fact, the total balance in the bank account of the school as on 31 March 2019 is not adequate to the fund the balance of development fund reported in its audited financial statements indicating that the amount of development fee collected from students has been utilised towards other expenses.

Para 67 of the Guidance Note on Accounting by Schools issued by the Institute of Chartered Accountants of India states "*The financial statements should disclose, inter alia, the historical cost of fixed assets.*" It was noted that the school has reported fixed assets at written down value in its financial statements instead of historic cost as required per the Guidance Note.

Therefore, based on the above non-compliances, no amount has been considered towards development fund while deriving the fund position of the school for FY 2019-2020 (enclosed in the later part of this order).

The school is directed to follow DOE instruction regarding development fund and depreciation reserve and ensure that development fund is maintained in a separate bank account, utilised only towards purchase of furniture, fixture and equipment and depreciation reserve is maintained equivalent to the amount of depreciation charged in the revenue accounts. Also, the school should prepare separate fixed assets schedule for assets purchased against development fund and other assets purchased against general reserve/ fund on historic cost convention, which has to be annexed with the audited financial statements along with the requisite disclosures as per the guidance note. Also, the school is directed to comply with the accounting treatment and presentation given in para 99 of Guidance Note 21.

7. Directorate's order no F.DE.15(672)/PSB/2018/30843-47 dated 24 Dec 2018 issued to the school post evaluation of the proposal for enhancement of fee for FY 2017-2018 noted that during FY 2015-2016, the school purchased motor vehicles (Honda City and Mobilio) by taking a secured loan from Kotak Mahindra Bank without complying with the requirements of Rule 177 i.e. ensuring that the retirement benefits of the staff are secured. The school submitted a copy of a cheque dated 13 Dec 2019 of INR 21,12,258 drawn by the society against the recovery of cost of car together with interest on loan. Therefore, cost of the car together with interest on loan till FY 2016-2017 totalling to INR 21,12,258 is added to the fund position of the school, as the same is received to the school from the society during FY 2019-2020.

Further, as per the loan statements provided by the school, the school has paid INR 1,02,300 and INR 72,236 during FY 2017-2018 and FY 2018-2019 as interest on loan for the above mentioned motor vehicles loan. Accordingly, interest expense of INR 1,74,536 paid during FY 2017-2018 and FY 2018-2019 respectively together with the amount of INR 21,12,258 already recovered by the school during FY 2019-2020 is added to the fund position of the school (enclosed in the later part of this order) with the direction to the school to recover the remaining interest amount from the Society within 30 days from the date of this order and not to pay any further interest expense from school funds.

Accordingly, an amount of INR 38,431 (as per loan repayment schedule) budgeted as interest on loan for the above mentioned vehicles during FY 2019-2020 has been adjusted from the budgeted expenses of FY 2019-2020 while deriving the fund position of the school (enclosed in the later part of this order).

B. Other Discrepancies

1. Clause 19 of Order No. F.DE./15(56)/Act/2009/778 dated 11 Feb 2009 states *"The tuition fee shall be so determined as to cover the standard cost of establishment including provisions for DA, bonus, etc., and all terminal, benefits as also the expenditure of revenue nature concerning the curricular activities."*

Further clause 21 of the aforesaid order states *"No annual charges shall be levied unless they are determined by the Managing Committee to cover all revenue expenditure, not included in the tuition fee and 'overheads' and expenses on play-grounds, sports equipment, cultural and other co-curricular activities as distinct from the curricular activities of the school."*

Rule 176 - 'Collections for specific purposes to be spent for that purpose' of the DSER, 1973 states *"Income derived from collections for specific purposes shall be spent only for such purpose."*

Para no. 22 of Order No. F.DE./15(56)/ Act/2009/778 dated 11 Feb 2009 states *"Earmarked levies will be calculated and collected on 'no-profit no loss' basis and spent only for the purpose for which they are being charged."*

Sub-rule 3 of Rule 177 of DSER, 1973 states *"Funds collected for specific purposes, like sports, co-curricular activities, subscriptions for excursions or subscriptions for magazines, and annual charges, by whatever name called, shall be spent solely for the exclusive benefit of the students of the concerned school and shall not be included in the savings referred to in sub-rule (2)."* Further, Sub-rule 4 of the said rule states *"The collections referred to in sub-rule (3) shall be administered in the same manner as the monies standing to the credit of the Pupils Fund as administered."*

Also, earmarked levies collected from students are a form of restricted funds, which, according to Guidance Note on Accounting by Schools issued by the Institute of Chartered Accountants of India, are required to be credited to a separate fund account when the amount is received and reflected separately in the Balance Sheet.

Further, the aforementioned Guidance Note lays down the concept of fund based accounting for restricted funds, whereby upon incurrance of expenditure, the same is charged to the Income and Expenditure Account ('Restricted Funds' column) and a corresponding amount is transferred from the concerned restricted fund account to the credit of the Income and Expenditure Account ('Restricted Funds' column).

From the information provided by the school and taken on record, it has been noted that the school charges earmarked levies in the form of Bus Fees, Computer/ Smart Class fees and Science fees from students. However, the school has not maintained separate fund accounts for any of these earmarked levies separately and the school has been generating surplus from earmarked levies, which has been utilised for meeting other expenses of the school or has been incurring losses (deficit) that has been met from other fees/income, which was also mentioned in Directorate's order No. F.DE.15(672)/PSB/2018/30843-47 dated 24 Dec 2018 issued to the school post evaluation of the fee increase proposal for FY 2017-2018. Details of calculation of surplus/deficit, based on breakup of expenditure provided by the school for FY 2018-2019 is given below:

Earmarked Fee	Income (INR)	Expenses (INR)	Surplus/(Deficit) (INR)
	A	B	C=A-B
Bus Fees [^]	47,78,661	53,99,245	(6,20,584)
Computer Fees [*]	44,95,194	2,59,897	42,35,297
Science fees	47,570	1,44,054	(96,484)

[^] The school did not provide complete breakup of expense incurred as to whether it includes salaries of staff involved in providing transport service. Also, the school has not apportioned depreciation on vehicles used for transportation of students in the expenses stated in table above for creating fund for replacement of vehicles, which should have been done to ensure that the cost of vehicles is apportioned to the students using the transport facility during the life of the vehicles. If these costs were included in the table above, the deficit from transport/ bus service would be much higher.

^{*} Based on discussion with the school, this income primarily comprises Smart Class fee.

The school explained that tuition fees collected from students is not sufficient to meet other establishment cost of the school. Thus, the surplus generated from earmarked levies has been applied towards meeting establishment cost on account of which fund balance of earmarked levies could not separate from the total funds maintained by the school. Accordingly, total fees (including earmarked fee) have been included in the budgeted income and budgeted expenses (included those for earmarked purposes) while deriving the fund position of the school (enclosed in the later part of this order) after adjusting for the refund/adjustment of fee collected under new head of income of Smart Class fee from students during FY 2017-2018 to FY 2019-2020 (Refer Financial Finding No. 5 for more details) .

The school is hereby directed to maintain separate fund account depicting clearly the amount collected, amount utilised and balance amount separately for each earmarked levy collected from students. Unintentional surplus/deficit, if any, generated from earmarked levies has to be utilized or adjusted against earmarked fees collected from the users in the subsequent year. Further, the school should evaluate costs incurred against each earmarked levy and propose the revised fee structure for earmarked levies during subsequent proposal for enhancement of fee ensuring that the proposed levies are calculated on no-profit no-loss basis.

2. Direction no. 3 of the public notice dated 4 May 1997 published in the Times of India states *"No security/ deposit/ caution money be taken from the students at the time of admission and if at all it is considered necessary, it should be taken once and at the nominal rate of INR 500 per student in any case, and it should be returned to the students at the time of leaving the school along with the interest at the bank rate."*

Further, Clause 18 of Order no F.DE/15(56)/Act/2009/778 dated 11 Feb 2009 states *"No caution money/security deposit of more than five hundred rupees per student shall be charged. The caution money, thus collected shall be kept deposited in a scheduled bank in the name of the concerned school and shall be returned to the student at the time of his/her leaving the school along with the bank interest thereon irrespective of whether or not he/she requests for refund."*

During discussion with the school during personal hearing, it mentioned that it has not communicated with the ex-students for collection of their caution money and has not made any adjustment towards unclaimed caution money. Therefore, the school is directed to communicate with ex-students to collect their caution money together with interest thereon and any unclaimed amount after 30 days of such communication should be treated as income by the school in its books of account. Thus, on account of the same, entire balance reported in the audited financial statements of the schools has been considered while deriving the fund position of the school (enclosed in the later part of this order).

3. Directorate's Order No. F.DE-15/ACT-I/WPC-4109/Part/13/7905-7913 dated 16 April 2016 notified the format of financial statements of the school, which included Receipt and Payment Account. However, the financial statements of FY 2016-2017, FY 2017-2018 and FY 2018-2019 were prepared without Receipt and Payment Account. Accordingly, the school did not comply with the directions included in aforesaid order.

The school is directed to ensure compliance with the aforementioned order and ensure that financial statements are complete in all regard as per the requirements.

4. During review of the proposal for fee increase proposal submitted by the school, the school was asked to submit supporting invoices and other documents in respect of following expense heads for the FY 2017-2018 and FY 2018-2019, however, the school did not submit the requisite information:

- Safety & Security Expenses
- Printing & Stationery Expense
- Legal & Professional Charges
- Housekeeping expense
- Repair & maintenance-building
- Bus Expenses
- Consultancy Charges

- Electricity & Water Charges
- Sundry Balance W/O

Accordingly, the school is directed to ensure that the requisite documents are submitted by it at the time of evaluation of subsequent fee increase proposal, as may be submitted by the school. Thus, the compliance regarding the same will be checked at the time of evaluation of subsequent fee increase proposal.

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

- The total funds available for the year 2019-2020 amounting to INR 17,66,87,806 out of which cash outflow in the year 2019-2020 is estimated to be INR 9,80,42,599. This results in net surplus of INR 7,86,45,207. The details are as follows:

Particulars	Amount (INR)
Cash and Bank Balance as on 31 March 2019 (as per audited financial statements of FY 2018-2019)	84,24,006
Investments (Fixed Deposits) as on 31 March 2019 (as per audited financial statements of FY 2018-2019)	40,50,411
Total Liquid Funds Available with the School as on 31 Mar 2019	1,24,74,417
<u>Add:</u> Fees/Incomes for FY 2019-2020 (based on income reported in audited financial statements of FY 2018-2019 considering that same income would accrue during FY 2019-2020)	97,432,678
<u>Add:</u> Amount recoverable from Society towards construction of building [Refer Financial Finding No. 1]	4,32,40,950
<u>Add:</u> Amount recoverable from Society towards transfer made to the Society from School funds [Refer Financial Finding No. 2]	1,50,00,000
<u>Add:</u> Amount recoverable from Society/school under the management of Society towards funds transferred in non-compliance of Rule 177 [Refer Financial Finding No. 2]	2,24,38,323
<u>Add:</u> Amount recoverable from previous Manager of the School towards remaining balance of amount advanced to the Manager [Refer Financial Finding No. 4]	3,40,687
<u>Add:</u> Amount recoverable from Society towards purchase of car and interest on loan thereon [Refer Financial Finding No. 7]	22,86,794
Gross Estimated Available Funds for FY 2019-2020	19,32,13,849
<u>Less:</u> Staff retirement benefits [Refer Financial Finding No. 3]	-
<u>Less:</u> Refund/Adjustment of Smart Class fee collected from students during FY 2017-2018 to FY 2019-2020 [Refer Financial Finding No. 5]	1,46,10,422
<u>Less:</u> Refund/Adjustment of increased annual charged collected from students during FY 2018-2019 and FY 2019-2020 [Refer Financial Finding No. 5]	-

Particulars	Amount (INR)
Less: Development Fund [Refer Financial Finding No. 6]	-
Less: Caution Money (as per Audited Financial Statements for FY 2018-2019) [Refer Other Finding No. 2]	19,15,621
Net Estimated Available Funds for FY 2019-2020	17,66,87,806
Less: Budgeted Expenses for FY 2019-2020 (as per budget submitted by the school along with its fee increase proposal) [Refer Note 1]	9,80,42,599
Estimated Surplus as on 31 Mar 2020	7,86,45,207

Notes:

1. Per the Budgeted Receipt and Payment Account for FY 2019-2020 submitted by the school along with proposal for fee increase, the school had estimated the total expenditure during FY 2019-2020 of INR 10,64,21,030, which in some instances was found to be unreasonable/excessive. Based on the explanations and details provided by the school during personal hearing, most of the expense heads as budgeted were considered. Further, during review of budgeted expenses, other discrepancies were also noted in some of the expense heads, which were adjusted from the budgeted expenses. The same were discussed during personal hearing with the school. Therefore, the following expenses have been adjusted while considering the budgeted expenses for FY 2019-2020:

Expense Head	Amount (Budgeted)	Amount (Allowed)	Amount (Disallowed)	Remarks
Depreciation	35,00,000	-	35,00,000	Depreciation, being a non-cash expense does not have any impact on the fund position of the school
Building Construction	34,00,000	-	34,00,000	Refer Financial Finding No. 1
Administrative expenses	2,12,77,410	1,97,98,979	14,78,431	Refer Financial Finding No. 4 & 7
Total	2,81,77,410	1,97,98,979	83,78,431	

In view of the above examination, it is evident that the school has sufficient funds for meeting all the budgeted expenditures for the financial year 2019-2020.

- ii. The directions issued by the Directorate of Education vide circular no. 1978 dated 16 Apr 2010 states "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." The school has sufficient funds to carry on the operation of the school for the academic session 2019-2020 on the basis of existing fees structure and after considering existing funds/reserves.

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, certain financial irregularities that were identified (appropriate financial impact of which has been taken on the fund position of the school) and certain procedural findings were also noted (appropriate instructions against which have been given in this order), the funds available with the school to carry out its operations for the academic session 2019-2020 and payment of salaries as per the recommendations of 7th CPC are sufficient. Accordingly, the fee increase proposal of the school may be rejected.

And whereas, the relevant materials were put before Director of Education for consideration and who after considering all material on record has found that the school has sufficient funds for payment of salaries as per the recommendations of 7th CPC and meeting the expenses for the financial year 2019-2020. Therefore, Director (Education) rejects the proposal submitted by the school for enhancement of fee for the academic session 2019-2020.

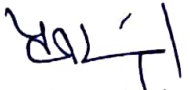
Accordingly, it is hereby conveyed that the proposal for enhancement of fee for session 2019-2020 of **Banyan Tree School (School ID-1924143), Lodhi Road, New Delhi** has been rejected by the Director of Education. Further, the management of said school is hereby directed under section 24(3) of DSEA, 1973 to comply with the following directions:

1. Not to increase any fee/charges during FY 2019-2020. In case, the school has already charged increased fee during FY 2019-2020, the school should make necessary adjustments from future fee/refund the amount of excess fee collected, if any, as per the convenience of the parents.
2. To communicate with 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 salaries and benefits are paid to the staff in accordance with section 10(1) of DSEA, 1973.
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. To rectify the financial and other irregularities/violations as listed above and submit the compliance report within 30 days from the date of this order to D.D.E.(PSB).

7. The Compliance Report detailing rectification of the above listed deficiencies/ violations must also be attached with the proposal for enhancement of fee of subsequent academic session, as may be submitted by the school. Compliance of all the directions mentioned above will be examined before evaluation of proposal for enhancement of fee for subsequent academic session.

Non-compliance of this order or any direction herein shall be viewed seriously and will be dealt with in accordance with the provisions of section 24(4) of Delhi School Education Act, 1973 and Delhi School Education Rules, 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:

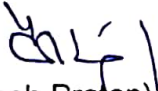
The Manager/ HoS
Banyan Tree School
School ID: 1924143
Lodhi Road, New Delhi

No. F.DE.15(66)/PSB/2019/ 1706-1710

Dated: 06/03/2020

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. DDE concerned
4. Guard file.


(Yogesh Pratap)
Deputy Director of Education
(Private School Branch)
Directorate of Education,
GNCT of Delhi