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

No. F.DE.15(~~70~~)/PSB/2024/ 1580-1584 Dated: 05/04/24

Order

WHEREAS, **Nirmal Bhartia School (School ID- 1821226) Sector-14, Dwarka, New Delhi - 110075,** (hereinafter referred to as **"the School"**), run by the **Nirmal Society for Education Promotion** (hereinafter referred to as the "**Society**"), is a private unaided school recognized by the Directorate of Education, Govt. of NCT of Delhi **(hereinafter referred to as "DoE"),** under the provisions of Delhi School Education Act & Rules, 1973 (**hereinafter referred to as "DSEAR, 1973"**). The school is statutorily bound to comply with the provisions of the DSEAR, 1973 and RTE Act, 2009, as well as the directions/guidelines issued by the DoE from time to time.

AND WHEREAS, every school is required to file a full statement of fees every year before the ensuing academic session under section 17(3) of the DSEA, 1973 with the Directorate. Such statement is required to indicate estimated income of the school to be derived from fees, estimated current operational expenses towards salaries and allowances payable to employees etc. in terms of rule 177(1) of the DSER, 1973.

AND WHEREAS, as per section 18(5) of the DSER, 1973 read with sections 17(3), 24(1) and rule 180(3) of the above DSER, 1973, responsibility has been conferred upon to the DoE to examine the audited financial Statements, books of accounts and other records maintained by the school at least once in each financial year. Sections 18(5) and 24(1) and rule 180(3) of DSEA&R, 1973 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 above, the Hon'ble Supreme Court in the judgment dated 27.04.2004 held in Civil Appeal No. 2699 of 2001 titled Modern School Vs. Union of India and others has conclusively decided that under sections 17(3), 18(4) read along with rules 172, 173, 175 and 177, the

DoE has the authority to regulate the fee and other charges, with the objective of preventing profiteering and commercialization of education.

AND WHEREAS, it was also directed by the Hon'ble Supreme Court, that the DoE in the aforesaid matter titled Modern School Vs. Union of India and Others in paras 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 19.01.2016 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 DoE to ensure compliance of terms, if any, in the letter of allotment regarding the increase of the fee by recognized unaided schools to whom land has been allotted by DDA/ land owning agencies.

AND WHEREAS, accordingly, the DoE vide order No. F.DE.-15(40)/PSB/2023/1964-1972 dated 01.03.2023 and F.DE.-15(40)/PSB/2023/2685-2692 dated 27.03.2023, directing all the private unaided recognized schools, running on the land allotted by DDA/other land-owning agencies on concessional rates or otherwise, with the condition to seek prior approval of DoE for increase in fee, to submit their proposals, if any, for prior sanction, for increase in fee for the academic session 2023-24.

AND WHEREAS, in pursuance to order dated 01.03.2023 and 27.03.2023 of the DOE, the school submitted its proposal for enhancement of fee for the academic session **2023-24**. Accordingly, this order dispenses the proposal for enhancement of fee submitted by the school for the academic session **2023-24**.

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 Chartered Accountants at HQ level who has evaluated the fee increase 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, in the process of examination of fee increase proposal filed by the aforesaid School for the academic session **2023-24**, necessary records and explanations were also called from the school through email. Further, the school was also provided an opportunity of being heard on 1st April 2024 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. During that hearing, the compliance of order no.F.DE.15(1376)/PSB/2023/4445-4450 dated 16.05.2023 issued for the academic session 2022-23 was also discussed and the school submissions were taken on record.

AND WHEREAS, on receipt of clarification as well as documents uploaded on the web portal for fee increase and subsequent documents submitted by the school as a result of the personal hearing, were evaluated thoroughly by the team of Chartered Accountants. After evaluation of fee proposal of the school and its subsequent clarifications and submissions, following key suggestions for improvement were noted:

A. Financial Suggestion for Improvements

1. Clause (vii) (c) of order No. F.DE/15/Act/2K/243/KKK/ 883-1982 dated 10.02.2005 issued by this Directorate states *"Capital expenditure cannot constitute a component of the financial fee structure."* Section 18(4) of DSEA,1973 states *"Income derived by unaided school by way of fees shall be utilized only for such educational purpose as may be prescribed"*.

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

   The DoE in their orders No. FD.E 15/ (87)/PSB/2020/414-18 dated 03.03.2020 issued to the school post evaluation of fee hike proposal for academic session 2019-20 and No. F.DE.15(1376)/PSB/2023/4445-4450 dated 16.05.2023 issued to the school post evaluation of fee hike proposal for the academic session 2022-23 noted that the school had spent INR 12,82,600 on purchase of buses. As the expenditure was incurred without complying with the above-mentioned provisions. Accordingly, the school was directed to recover INR 12,82,600 from society which is still pending for recovery.

   The compliance reports submitted by the school against order dated 16.05.2023 was evaluated and taken on record. The school submitted that "*the expenditure of Rs. 12,82,000/- incurred by the school was not towards purchase of a bus, but for purchase & fixing of Air Conditionings systems in two school buses, purely for the benefit of all students using the school buses for excursion/trips etc.*" Therefore, it is established that the expenditure was incurred for buses only and the amount is to be recovered from the society.

   As amount of INR 12,82,000 was spent on buses without complying with the above-mentioned provisions therefore, same has been considered while deriving the fund position of the school for the academic session 2023-24.

   Further, on review of the audited financial statements for the FY 2022-23, it is noted that school has purchased buses for INR 60,80,120 and for that school has taken loan from Axis bank Ltd. for INR 52,23,000 and used school funds for making down payment of INR 8,57,120. During the year the school has repaid the principal amount of the loan of INR 7,14,403 and the interest thereon of INR 2,49,776. The details of school funds utilized for purchase of buses in FY 2022-23 are as follows:

Year	Down Payment (INR)	Principal (INR)	Interest (INR)	Total (INR)
FY 2022-23	8,57,120	7,14,403	2,49,776	18,21,299

The aforesaid utilization of funds is in contravention of provisions of Rule 177 of the DSER, 1973. The audited financial statements for FY 2022-23 are prepared and submitted by the school for evaluation of the fee proposal wherein the school has presented the deficit on account of running of transport facility to the students. Therefore, it shows that transport fee/fund is not available to the school for purchase of new buses and addition of buses during the FY 2022-23 are being made out of the fees and funds collected from the students under other heads which is in contravention of aforesaid provisions.

As amount of INR 18,21,299 was spent on purchase of buses and payment of interest taken for the buses without complying with the above-mentioned provisions therefore, same has been considered while deriving the fund position of the school for the academic session 2023-24.

In view of the above, total amount of INR 31,03,899 (INR 12,82,600 plus INR 18,21,299) utilized by the school for the buses is recoverable from the society and thus, same has been included in the fund position of the school with the direction to the school to recover this amount from society within 30 days from the date of issue of this order. Non-compliance with this directive would be taken seriously, and the department would take appropriate action against the school under Section 24(4) of the DSEA, 1973 without giving any further opportunity to the school.

2. Rule 59 of DSER, 1973 'Scheme of management of recognized school' states "*Regarding appointment and qualification of Manager 59(2)(1), the educational and other qualifications of the manager and his duties and responsibilities; the position of the manager viz-a-viz the managing committee:*

j) no employee of an aided school (other than the head of school) shall be appointed as the manager, the head of school may be appointed the manager of a school, whether aided or unaided.

k) appointment of the manager; the terms and conditions of his appointment; removal of the manager; filling up of casual vacancy in the office of the manager, duties, and responsibilities of the manager.

l) bills (including bills relating to the salaries and allowances of the teachers and non- teaching staff) shall be jointly signed by the manager and the head of the school; but where the head of the school is also the manager, such bills shall be signed jointly by the head of the school and another member of the managing committee specially authorized by that committee in this behalf.

m) *that the administration and academic work of the school shall be attended to by the head of school, and except where the head of school is the manager, the manager shall not interfere with the day-to-day administration and academic work of the school.*

n) *manager shall not be at the same time the manager of any other school and a person shall not be at the same time the chairman of the managing committee and the manage.*

As per clause 8 of the order No. DE.15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 and clause No. 23 of order no- F.DE/15(56)/Act/ 2009/778 dated 11.02.2009, *"no amount whatsoever shall be transferred from the recognized unaided fund/ school fund to a society or trust or any other institution"*. This was upheld by the Hon'ble Supreme Court in the matter of *Modern School Vs. Union of India & Others*.

The DoE in the order No. FD.E 15/ (87)/PSB/2020/414-18 dated 03.03.2020 issued to the school post evaluation of fee hike proposal for academic session 2019-20 and order no. F.DE.15(1376)/PSB/2023/4445-4450 dated 16.05.2023 to the school post evaluation of fee hike proposal for academic session 2022-23 noted that the school had paid consultancy charges and travelling expense of INR 2,70,000 during FY 2016-17 to the manager which was not in accordance with above mentioned provisions. The aforesaid expenditure was incurred without complying with the aforesaid provisions of DSER, 1973. However, no amount is recovered from the society yet.

In the compliance report dated 18.07.2023 the school submitted, *"....and the same amount has been added again in the fund position for AY 2022-23, thus, resulting in double jeopardy."*

The submission of the school is incorrect and not sustainable. The school was directed to recover the amount, which was collected from parents and was required to be utilized for legitimate expenses in accordance with the provisions of the DSEA & R, 1973, and the same is not recovered from the society despite repeated directions in the order issued to the school in previous years. The department directed the school to recover the amount involved in the transaction and not any interest thereon despite delay in the recovery. The amount belongs to the school and should be utilized only for the legit purposes as per the provisions of the DSEA & R, 1973. It is clear position in the law that till the amount is recovered from the society the department can direct the school to recover the amount from the society and will add the same in the funds position.

Therefore, the above amount of INR 2,70,000 paid by the school to the manager without complying with above mentioned provisions has been considered as fund available with the school in calculation of the fund position of the school with the direction to the school to recover this amount from the society within 30 days from the date of issue of this order. Non-compliance with the above direction shall be viewed seriously in accordance with the provisions of Section 24(4) of the DSEA, 1973 while evaluating the fee hike proposal for the subsequent academic session.

3. Para 7.14 of AS-15 *"Employee Benefit"* issued by the Institute of Chartered Accountants of India (ICAI) states 'Plan Assets as:

a. *assets held by a long-term employee benefit fund; and*

b. *qualifying insurance policies."*

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Further, the para 57 of the AS-15 states *"an enterprise should determine the present value of defined benefit obligations and the fair value any plan assets with sufficient regularity that the amounts recognized in the financial statements do not differ materially from the amounts that would be determined at the balance sheet date."*

On review of the audited financial statements of FY 2022-23 it is revealed that the school has provided liability for retirement benefits in accordance with the actuarial valuation report. As per the actuarial valuation report the total liabilities for retirement benefits were INR 2,19,06,799 *(INR 1,57,99,274 for gratuity plus INR 61,07,525 for leave encashment.)*

Against the total liability for retirement benefits, the school has invested INR 1,01,53,810 *(INR 86,55,224 for gratuity plus INR 14,98,586 for leave encashment.)* with LIC.

Further, post hearing the school submitted documents related to additional amounts deposited in plan assets with LIC amounting to INR 2,00,000 towards Gratuity.

The amounts deposited with LIC for gratuity and leave encashment liabilities, qualifies as 'Plan Assets'. Therefore, the amount invested by the school amounting to **INR 1,03,53,810** (INR 1,01,53,810 plus INR 2,00,000) in the plan assets for gratuity and leave encashment is considered while calculating the fund position of the school for the FY 2023-24.

Accordingly, the school is directed to invest an amount equivalent to the liability of retirement benefit that qualify as 'Plan Assets' within 30 days from the date of this order.

4. Order dated 19.01.2016 issued by the Hon'ble High Court of Delhi state *"every recognized unaided schools to whom land was allotted by DDA shall not increase the rate of fees without the prior sanction of Director, Education"*. Further, as per the directions of Supreme Court in ***Modern School vs. Union of India & Ors.*** (supra), a Circular dated 16.04.2010 has been issued reiterating as under:

   a) *It is reiterated that annual fee-hike is not mandatory.*
   b) *School shall not introduce any new head of account or collect any fee thereof other than those permitted. Fee/funds collected from the parents/students shall be utilized strictly in accordance with rules 176 and 177 of the Delhi School Education Rules, 1973.*
   c) *If any school has collected fee in excess of that determined as per procedure prescribed, the school shall refund/adjust the same against subsequent installments of fee payable by students.*

Also, Clause no. 17 of Letter of Allotment of Land issued by DDA states that *"The school shall not increase the rates of tuition fee without prior sanction of the Directorate of Education, Delhi Admn. and shall follow provisions of Delhi School Education Act/ Rules, 1973 and other instructions issued from time to time."*

On review of the fee structure for the FY 2020-21 to FY 2022-23, it is noted that the school has increased annual charges of all the classes without obtaining prior approval of Directorate. The details of fee increase by the school in FY 2022-23 without approval of the Directorate are given below:

Annual Charges				
Class	**FY 2021-22**	**FY 2022-23**	**Difference**	**%**
Nursery	39,454	40,584	1,130	3%
KG	40,584	40,584	0	0%
I	39,526	40,656	1,130	3%
II	37,270	40,656	3,386	9%
III	33,882	40,656	6,774	20%
IV	33,882	40,656	6,774	20%
V	34,506	40,656	6,150	18%
VI	40,068	48,084	8,016	20%
VII	40,068	48,084	8,016	20%
VIII	40,068	48,084	8,016	20%
IX	43,358	52,104	8,746	20%
X	47,366	52,104	4,738	10%
XI	47,366	54,000	6,634	14%
XII	46,462	54,000	7,538	16%

The fee increase by the school is not in accordance with the above-mentioned provisions. The impact of increase in annual charges could not be determined and thus, no impact is considered in this order. Accordingly, the school is directed to determine the excess annual charges collected from the students and to refund/adjust the increased fee to the students which was charged during FY 2022-23 and submit the evidence of the same to the Directorate within 30 days from the date of issue of the order and not to increase any fee of any class without prior approval of the Directorate.

5. Order No. DE 15/ Act/ Duggal.Com /203 /99 /23033-23980 dated 15.12.1999 provides, *"Development fee, not exceeding 15% of the total annual tuition fee may be charged for supplementing the resources for purchase, up gradation and replacement of furniture, fixtures and equipment. Development fee, if required to be charged, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head along with income generated from the investment made from this fund, will be kept in a separately maintained Development Fund Account."*

The aforesaid provision was upheld by the Hon'ble SC in the matter of Modern School vs Union of India and Anr. (2004). Moreover, the Hon'ble SC states, *"27. In addition to the directions given by the Director of Education vide Order No. DE 15/ Act/ Duggal.Com /203 /99 /23033-23980 dated 15.12.1999, we give further directions as mentioned herein below:*

(a) Every recognized unaided school covered by the Act shall maintain the accounts on the principles of accounting applicable to non-business organization/not-for-profit organization.

In this connection, we inter alia direct every such school to prepare their financial statement consisting of balance sheet, profit and loss account, and receipt-and-payment account."

In view of the above, the school is required to maintain the financial statements in accordance with principles of accounting applicable to not-for-profit organization. These principles are duly enunciated in the Guidance Note -21 Accounting by School as issued by the Institute of Chartered Accountants of India. Para 99 of the Guidance Note -21 stipulates, *"Restricted funds that represent the contributions received whose use is restricted by the contributors, are credited to a separate fund account when the amount is received and reflected separately in the balance sheet."*

In view of the above provisions and the court directions, the development fee is of the nature of restricted fund and the school should ensure to present correct balance of unutilized development fund in the liability and the same should be supported with equivalent amount of FDRs and bank balance. However, on review of the audited financial statements for the FY 2022-23 it is noted that the development fund balance (i.e., liability and reserves side) is INR 75,13,306 and corresponding FDR and bank balance (assets side) is INR 38,65,605. During the hearing the school accepted that there is no FDR maintained for development fund. It is clear that the school failed to ensure preparation and presentation of the financial statements in accordance with the accounting principles which lead to mismatch in the unutilized fund balance of development fund with the corresponding balance in bank and FDRs.

The school is directed to ensure and follow fund-based accounting as per the principles enunciated in the GN-21 applicable to schools. However, while deriving the fund position the balance available in the bank account amounting INR 38,65,505 has been considered. The compliance shall be verified at the time of verification of fee proposal for next academic session.

B. Other Suggestion for Improvements

1. As per para 67 of the Guidance Note on Accounting by Schools issued by the Institute of Chartered Accountants of India, "The financial statements should disclose, inter alia, the historical cost of fixed assets."

On review of audited financial statements for the FY 2022-23, it is noted that the school has presented its fixed assets purchased out of school funds at Written Down Value (WDV) which is not consistent with the Guidance Note. Similar observation noted in order no. F.DE.15(1376)/PSB/2023/4445-4450 dated 16.05.2023 issued for the academic session 2022-23. Thus, the school is hereby directed to comply with the requirements of Guidance Note issued by ICAI.

From a review of documents submitted by the school post personal hearing, the following has been noted with respect to the Fixed Asset Register (FAR) maintained by the school:

- *No tagging of the assets has been done in Fixed Assets Register (FAR) and location is not identified due to which assets could not be physically verified.*

- *Depreciation for the individual assets is not recorded in the FAR, only cost of the assets is available in the FAR and WDV of the assets is not available.*
- *Invoice number, manufacturer's serial number and location of the asset is not mentioned in the fixed assets register.*

Therefore, the School is hereby directed to prepare a FAR, which should include details such as asset description, purchase date, supplier name, invoice number, manufacturer's serial number, location, purchase cost, other costs incurred, depreciation, asset identification number, etc. to facilitate identification of asset and documenting complete details of assets at one place. In the compliance report school submitted that it will take care of the directions given by the Directorate while preparing the fixed assets register in the subsequent year.

The school is again directed to comply with the directions for preparing FAR with relevant details mentioned above according to the process for periodic physical verification of assets and documenting the results of physical verification of assets. The same shall be verified at the time of evaluation of the fee hike proposal for subsequent years. This being a procedural finding, no financial impact is warranted on the fund position of the school.

2. *Section 18(5) of the DSEA, 1973 states "the managing committee of every recognized private school shall file every year with the Director such duly audited financial and other returns as may be prescribed, and every such returns shall be audited by such authority as may be prescribed".*

Further, Rule 180 (1) of DSER, 1973 states *"every recognized private school shall submit returns and documents in accordance with Appendix-II".*

Point No. (2) of the Appendix-II requires final accounts i.e., receipts and payments account, income and expenditure account and balance sheet of the preceding year should be duly audited by the Chartered Accountant.

Accordingly, DoE specified vide Order No. F.DE-15/ACT-I/WPC-4109/Part/13/7905-7913 dated 16.04.2016, the format of returns and other documents required to be submitted by the private unaided recognized schools. The aforesaid order also specified format for the financial statements to be such as specified by the Institute of Chartered Accountants of India (ICAI), established under Chartered Accountants Act, 1949 (38 of 1949) in Guidance Note-21 'Accounting by Schools (2005)' as amended from time to time.

Based on the aforesaid provisions, every private unaided recognized school is required to get its accounts audited by a Chartered Accountant before submitting a return under Rule 180(1) of DSER, 1973. In Directorates in its order no. F.DE.15(1376)/PSB/2023/4445-4450 dated 16.05.2023 issued for the academic session 2022-23 the following was noted:

a. The Independent Audit Report was not issued in the format prescribed by Standard on Auditing 700 (SA-700), as defined by the Institute of Chartered Accountants of India (ICAI). Because most of the content of the Independent Auditors' Report was missing, such as the auditors' and management's responsibilities.

b. No cash and bank balances had been disclosed in the balance sheet for the year ended 31.03.2022.

Accordingly, the school was directed to strengthen its process for preparation and presentation of financial statements in accordance with the above-mentioned provisions.

Further, on review of the audited financial statements and Independent Auditors' Report for the FY 2022-23, it is noted that:

a. The Independent Audit Report was issued in the format prescribed by Standard on Auditing 700 (SA-700), as defined by the Institute of Chartered Accountants of India (ICAI).

b. Cash and bank balances has been disclosed in the balance sheet for the year ended 31.03.2023.

Therefore, as the school has started compliance of aforesaid directions from FY 2022-23 the submission of the school has been taken on record and considered.

3. Section 13 (1) of the Right to Education Act, 2009 states that *"no school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure".*

Section 13 (2) of the Right to Education Act, 2009 states that *"Any school or person, if in contravention of the provisions of sub-section (1):*

a. receives capitation fee, shall be punishable with fine which may be extended to ten times the capitation fee charged.

b. subjects a child to screening procedures shall be punishable with a fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contravention.

And section 2(b) of the Right to Education Act, 2009 states *"capitation fee" means any kind of donation or contribution or payment other than the fee notified by the school.*

Further, the Supreme Court in its Judgement dated 02.05.2016 in the matter of Modern *'Dental College and Research Centre Vs. State of Madhya Pradesh [Medical Council of India]'* held that education is a noble profession and emphasized that:

"Every demand of capitation fee by educational institutions is unethical & illegal. It emphasized that commercialization and exploitation are not permissible in the education sector and institutions must run on a 'no-profit-no-loss' basis".

The Hon'ble Supreme Court categorically held that *"though education is now treated as an 'occupation' and, thus, has become a fundamental right guaranteed under Article 19(1) (g) of the Constitution, at the same time shackles are put in so far as this particular occupation is concerned, which is termed as noble. Therefore, profiteering and commercialization are not permitted, and no capitation fee can be charged. The admission of students has to be on merit and not at the whims and fancies of the educational institutions,"*

Further, the Hon'ble High Court in LPA 196/2004 in the matter of *'Rakesh Goyal Vs. Montfort School and Section 13(1) of RTE Act, 2009'* states *"no school or person shall, while admitting a child, collect any Capitation fee/Donation from the parents. Any school or person who contravenes this provision and receives a capitation fee, shall be punishable with a fine which may extend to ten times the capitation fee charged".*

Further, The Directorate of Education, vide Order No. DE15/ Act/Duggal.com/203/99/2303323980 dated 15.12.1999 and Order No.F.DE, /15(56)/Act/2009/778 dated 11.02.2009, indicated the following types of fee that a recognised private unaided school can collect from the students/ parents:

a. Registration Fee
b. Admission Fee:
c. Caution Money
d. Tuition Fee
e. Annual Charges
f. Earmarked Levies
g. Development Fee

Based on the provisions mentioned above, charging of *'SEN Programme Fee'* from the students is in the nature of capitation fee only. Additionally, if the school is charging unwarranted fee under different heads or introduce new head of fee other than the prescribed heads of fee and accumulates surplus fund out of it, it is also prima-facie considered to be a collection of capitation fee in other manner and form.

The school vide their submission dated 18.07.2023 submitted that, *"a pupil identified as having Special Educational Needs finds it harder than other pupils to make progress. This may be due to a specific learning difficulty, a recognized disability such as a hearing impairment, emotional, mental health or social difficulties, or speech and language difficulties. To cater to the special needs of such students, the school has hired three special educators and helper, thereby incurring additional expenditure. Thus, the SEN Programme fees is only being levied from such students."*

It is also submitted that the school charges SEN programme fees from 18 students only. The submission of the school has been taken on record and considered.

4. Para 99 of Guidance Note-21 *'Accounting by school'* issued by the Institute of Chartered Accountants of India (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*

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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 charges every year".

Taking the cognizance from the above para, the school needs to create the 'Development Fund Utilisation Account' as deferred income to the extent of cost of assets purchased out of development fund and then this deferred income should be amortised in the proportion of the depreciation charges to revenue account. By following the aforesaid accounting treatment for development fund, development fund utilisation account and depreciation on assets purchased out of development fund as per para 99 of GN-21, the depreciation reserve fund would be mere an accounting head and school do not require creation of equivalent investments against the depreciation reserve.

The Directorate in order no.F.DE.15(1376)/PSB/2023/4445-4450 dated 16.05.2023 issued for the academic session 2022-23, stated that the school had not been following para 99 of the GN 21. Because upon incurrence of the capital expenditure out of the fund, the school has created development fund utilisation account but has not transferred any amount from deferred income to the credit of income and expenditure account. Thus, the school was directed to follow accounting treatment specified in para 99 of the Guidance Note 21 with respect to the collection and utilization of development fund and make necessary adjustment in the general reserve account.

In the compliance report dated 18.07.2023, the school submitted that, *"the school has taken note of the suggestion and it will follow the Guidance Note with respect to the collection and utilization of development fund and make necessary adjustments in the general reserve fund."*

Thus, the school is again directed to ensure compliance of the aforesaid directions and make complete disclosure in the notes forming part of the balance sheet within 30 days from the date of issue of this order.

5. Clause 103 on Related Party Disclosure, contained in Guidance Note 21 on 'Accounting by Schools', issued by the ICAI, there is a requirement that keeping in the view the involvement of public funds, schools are required to disclose the transactions made in respect of related parties.

   From review of the audited financial statements of FY 2022-23, it is noted that the school has not made any disclosure relating to related party transactions in its audited financial statements. In the absence of such details, the purpose and genuineness of transactions entered into between the related parties cannot be determined. Therefore, the School is hereby directed to include such details in audited financial statements of the subsequent year.

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

i. The total funds available for the FY 2023-24 amounting to **INR 15,76,57,610** out of which cash outflow for the FY 2023-24 is estimated to be **INR 15,92,83,216.** This results in deficit of **INR 16,25,607** after meeting all expenditures. The details are as follows:

Particulars	Amount (in INR)
Cash and Bank balances as on 31.03.23 as per Audited Financial Statements	1,20,07,090
Investments as on 31.03.23 as per Audited Financial Statements	1,04,33,810
Liquid Funds as on 31.03.2023	**2,24,40,900**
Add: Amount recoverable from society for amount spent on buses **(Refer Financial Suggestion for Improvement no. 1)**	31,03,899
Add: Amount recoverable from society for amount paid as Travelling allowance to Manager **(Refer Financial Suggestion for Improvement no. 2)**	2,70,000
Add: Fees for FY 2022-23 as per Audited Financial Statements **(Refer Note 1 below)**	14,07,51,493
Add: Other Income for FY 2022-23 as per Audited Financial Statements **(Refer Note 1 below)**	13,20,088
Add: Additional Fees due to increase in fee **(Refer Note 4 below)**	42,22,545
Total Available Funds for FY 2023-24	**17,21,08,925**
Less: Development fund **(Refer Financial Suggestion for Improvement no. 5)**	38,65,505
Less: Caution Money payable as per Audited Financial Statements for FY 2022-23 **(Refer Note 2 below)**	2,32,000
Less: Depreciation Reserve Fund **(Refer Note 3 below)**	-
Less: Gratuity and leave encashment LIC as per Audited Financial statements of FY 2022-23 **(Refer Financial Suggestion for Improvement No. 3)**	1,03,53,810
Net Available Funds for FY 2023-24 (A)	**15,76,57,610**
Less: Budgeted expenses for the session 2023-24 **(Refer Note 5 below)**	13,66,78,806
Less: Salary arrears to the staff **(Refer Note 6 below)**	2,26,04,410
Total Estimated Expenditure for FY 2023-24 (B)	**15,92,83,216**
Net Deficit (A-B)	**16,25,607**

Note 1: All the fee and other income as per financial statements for the FY 2022-23 has been considered with the assumption that the amount received in FY 2022-23 will at least accrue during FY 2023-24.

Note 2: The detail of fixed deposit held by the school as per the audited financial statements for the FY 2022-23 is provided below:

Particulars	Amount (in INR)	Remarks
FDR for Caution Money	2,80,000	The liability shown as 'Caution money' in FY 2022-23 is INR 2,32,000 though the investment made against that is INR 2,80,000. Though the reasons of difference are not disclosed in the notes to accounts, but the amount payable to students as per books of accounts is considered while calculating available

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Particulars	Amount (in INR)	Remarks
		funds of the school. It appears that the difference is on account of unclaimed caution money and the school is directed to ensure to transfer unclaimed caution money to the income of the school.
Total	**2,80,000**	

Note 3: As per the Duggal Committee report, there are four categories of fees that can be charged by a private unaided school. The first category of fee comprised *of 'Registration fee and all one Time Charges'* levied at the time of admissions such as admission and caution money. The second category of fee comprises '*Tuition Fee*' which is to be fixed to cover the standard cost of the establishment and to cover the expenditure of revenue nature for the improvement of curricular facilities like library, laboratories, science, and computer fee up to class X and examination fee. The third category of the fee should consist of '*Annual Charges*' to cover all expenditure not included in the second category and the fourth category consist of all '*Earmarked Levies*' for the services rendered by the school and be recovered only from the 'User' students. These charges are transport fee, swimming pool charges, Horse riding, tennis, midday meals etc. This recommendation has been considered by the Directorate while issuing order No. DE.15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 and order No. F.DE. /15(56)/Act/2009/778 dated 11.02.2009.

The purpose of each head of the fee has been defined and it is nowhere defined the usage of development fee of any other head of fee for investments against depreciation reserve fund.

Further, Clause7 of order No. DE.15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 and clause 14 of the order no F.DE./15(56)/Act/2009/778 dated 11.02.2009, "*development fee, not exceeding 15% of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixture 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*". Thus, the above direction provides for:

- Not to charge development fee for more than 15% of tuition fee.
- Development fee will be used for purchase, upgradation and replacement of furniture, fixtures, and equipment.
- Development fee will be treated as capital receipts.
- Depreciation reserve fund is to be maintained.

Thus, the creation of the depreciation reserve fund is a pre-condition for charging of development fee, as per above provisions and the decision of Hon'ble Supreme court in the case of Modem School Vs Union of India & INR: 2004(5) SCC 583. Even the Clause 7 of the above direction does not require to maintain any investments against depreciation reserve fund.

Also, as per para 99 of Guidance Note-21 'Accounting by School' issued by the Institute of Chartered Accountants of India states, "*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.*"

Accordingly, the depreciation reserve (that is to be created equivalent to the depreciation charged in the revenue account) is mere of an accounting head for the appropriate accounting treatment of depreciation in the books of account of the school in accordance with Guidance Note -21 issued by the Institute of Chartered Accountants of India. Thus, there is no financial impact of depreciation reserve on the fund position of the school. Accordingly, the depreciation reserve fund as reported by the school in the financial statements for the FY 2022-23 has not been considered while deriving the fund position of the school.

Note 4: The school was allowed to increase fee by 3% vide order no.F.DE.15(1376)/PSB/2023/4445-4450 dated 16.05.2023 issued for the academic session 2022-23 from 1st April, 2023. Accordingly, additional income on account of fee increase will also accrue to the school in FY 2023-24 and thus, following amount has been considered as funds available with the school:

Particulars	
% of fee increase allowed as per order issued for session 2022-23	3%
Effective date of fee increase as per order issued for session 2022-23	01/04/2023
No. of months	12.00
Fees for FY 2022-23 as per Audited Financial Statements (INR)	**14,07,51,493**
Additional fees due to increase in fee (INR)	**42,22,544**

Note 5: The budgeted expenditure proposed amounting **INR 18,06,19,000** by the school has been considered while deriving the fund position of the school except the following:

Heads	**Budgeted expenditure in FY 2023-24 (INR)**	**Amount Disallowed (INR)**	**Remark**
Salary- Teaching	9,26,89,000	1,16,03,884	The school has proposed salary which is more than 26% of the actual expenses incurred in FY 2022-23. No justification is submitted for such substantial increase in the budget for FY 2023-24. Moreover, the school has already implemented 7th CPC for payment of salaries. In the absence of any

Heads	Budgeted expenditure in FY 2023-24 (INR)	Amount Disallowed (INR)	Remark
			clarification and considering the fact of annual increment and applicable DA announced, the proposed budgeted increase is restricted to 10%.
Salary- Non-Teaching	1,84,71,000	14,59,585	The school has proposed salary which is more than 19% of the actual expenses incurred in FY 2022-23. No justification is submitted for such substantial proposed increase in the budget for FY 2023-24. Moreover, the school has already implemented 7th CPC for payment of salaries. In the absence of any clarification and considering the fact of annual increment and applicable DA announced, the proposed budgeted increase is restricted to 10%.
Advertisement & Recruitment Expenses	14,00,000	2,92,222	The school has not furnished any justification for increase in the expenditure vis-à-vis expenses incurred in the FY 2022-23 and therefore, the same have been considered to the extent of 110% of actual expenditure incurred in FY 2022-23.
Electricity & Water Charges	50,30,000	4,02,992	
Rent, rates, taxes, Property Tax & Ground Rent	6,72,000	1,62,852	
Together We can & Community Cup, Voice of Art	2,850,000	16,99,538	
Annual Day	1,000,000	3,40,311	
Sport Day	400,000	3,25,844	
Young at Art & Children's Day	400,000	1,56,199	
Legal & Professional Expenses	6,72,000	6,72,000	The school has introduced new heads of expenses in the Budget for the FY 2023-24 and has not submitted any justification for the same. Accordingly, the same are not considered.
Subject Fee	7,38,000	7,38,000	
AMC & Subscriptions / Renewal (License)	772,000	7,72,000	
Curricular Expenses-Mentor prog.	1,680,000	16,80,000	

Heads	Budgeted expenditure in FY 2023-24 (INR)	Amount Disallowed (INR)	Remark
AMC for maintenance	21,94,000	21,94,000	
Transportation Expenses	2,02,40,000	2,02,40,000	Neither Income nor expense has been considered on the assumption that earmarked levies are collected on no profit no loss basis
EWS Books/Uniforms	1,400,000	14,00,000	
Total	**15,06,08,000**	**4,41,39,426**	

Note 6: On review of the audited financial statements of FY 2022-23, it has been noted that the school has made provision for the liability of 7th CPC amounting to INR 2,26,04,410 as at 31.03.2023. In view of the fact that the school provided for 7th CPC arrears liability in the financial statements, which is duly audited by the Chartered Accountant of the school, and the same was considered by the department in the previous orders, the amount of 7th CPC salary arrears as provided in the audited financial statements have been considered again while calculating the fund position of the school.

Further, carrying over the 7th CPC salary arrears liabilities over the years appears to be an attempt of the school to show excess liabilities in the books of accounts and to sidetrack its funds by utilizing for the other expenses. Accordingly, the school is directed to prioritize the release of arrears to it's staff over other expenditure. Non-adherence to the directions of the DoE by not paying the arrears to staff may attract strict action against the school including non-cognizance of carry forward liabilities towards 7th CPC arrears in future fee hike orders.

ii. In view of the above examination, it is evident that the school does not have adequate funds to carry on its operation for the academic session **2023-24** on the existing fee 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 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 Chartered Accountants that certain financial suggestions (appropriate financial impact has been taken on the fund position of the school) and certain procedural suggestions which were also noted (appropriate instruction against which have been given in this order) and that the sufficient funds are not available with the school to carry out its operations for the academic session **2023-24**. Accordingly, the fee increase proposal of the school for academic session 2023-24 may be accepted.

AND WHEREAS, while evaluating the fee hike proposal, department considers that how much liquid funds would require the school for a particular session considering the budgeted expenditures for smooth operation without compromising with the quality of education. Thus, while deriving the fund position of the school all legitimate expenditures revenue as well as capital in accordance with the provisions DESA&R, 1973 and pronouncement of Courts judgment have been considered. Therefore, balance of the other current assets other and current liabilities has not been considered. Because it is clear that the current assets, loans and advances and current liabilities are cyclic in nature and the same have already been considered in the form of budgeted income and expenditure of the school in the earlier years. Thus, current assets, loans and advances and current liabilities will always reflect in the financial statements at the end of the financial year.

AND WHEREAS, it is noticed that the school has utilized **INR 33,73,899** in contravention of the provisions of DSEA&R, 1973 and other orders issued by the departments from time to time. Therefore, the school is directed to recover the aforesaid amount from the society. The receipts along with copy of bank statements showing receipt of the above-mentioned amount should be submitted with DoE, in compliance of the same within 30 days from the date of issue of this order. Non-compliance with this direction shall be viewed seriously as per the provision of the DSEA, 1973 and the DSER, 1973 without providing any further opportunity of being heard.

AND WHEREAS, the act of the school of charging unwarranted free or any other amount/fee under head other than the prescribed head of fee and accumulation of surplus fund thereof tantamount to profiteering and commercialization of education as well as charging of capitation fee in other form and thus, school should ensure to charge fee only under the prescribed heads and utilized the fees collected for the defined purposes in accordance with the provisions of the DSEA, 1973 and the DSER, 1973.

AND WHEREAS, recommendation of the team of the Chartered Accountants along with relevant material were put before the Director of Education and who after considering all the material on the record, and after considering the provisions of section 17(3), 18(5), 24(1) of the DSEA, 1973 read with Rules 172, 173, 175 and 177 of the DSER, 1973 who has found that the sufficient funds are not available for meeting financial implication for the academic session **2023-24**. Keeping this in view, and exercising the powers conferred under Rule 43 of DSER, 1973, the Director (Education) has accepted the proposal submitted by the school and allowed an increase in fee by 1% except for earmarked levies to be effective from 01.04.2024.

Accordingly, it is hereby conveyed that the proposal for fee hike of **Nirmal Bhartia School (School ID- 1821226) Sector-14, Dwarka, New Delhi - 110075,** filed by the school in response to the order Nos. F.DE.-15(40)/PSB/2023/1964-1972 dated 01.03.2023 and F.DE.-15(40)/PSB/2023/2685-2692 dated 27.03.2023 for the academic session 2023-24, is accepted by the Director (Education) with the above conclusion and suggestions and the school is allowed to increase the fee by 1%, except for earmarked levies, for session 2023-24 to be effective from 01.04.2024.

AND WHEREAS, the school is directed, henceforth to take necessary corrective steps on the financial and other suggestion noted during the above evaluation process and submit the compliance report within 30 days from the date of issue of this order to the D.D.E (PSB).

Further, the management of said School is hereby directed under section 24(3) of DSEA, 1973 and the provisions of DSER, 1973, to comply with the following directions:

1. To increase the fee under the prescribed heads only with the prescribed percentage from the specified date i.e., 01.04.2024.

2. To ensure payment of salary is made in accordance with the provision of Section 10(1) of the DSEA, 1973. Further, it is pertinent to mention here that the scarcity of funds cannot be the reason for non-payment of salary and other benefits admissible to the teachers/ staffs in accordance with section 10(1) of the DSEA, 1973. Therefore, the Society running the school must ensure payment to teachers/ staffs accordingly.

3. To utilize 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.

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 is issued with the prior approval of the Competent Authority.

5/4/24

(Patil Pranjal Lahen Singh)
Additional Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi

To
The Manager/ HoS
Nirmal Bhartia School (School ID- 1821226)
Sector-14, Dwarka, New Delhi - 110075,

Dated: 05/04/24

No. F.DE.15(70)/PSB/2024/ 1580 – 1584

Copy to:

1. P.S. to Principal Secretary (Education), Directorate of Education, GNCT of Delhi.
2. P.S. to Director (Education), Directorate of Education, GNCT of Delhi.
3. DDE (South West-B-I) ensure the compliance of the above order by the school management.
4. In-charge (I.T Cell) with the request to upload on the website of this Directorate.
5. Guard file.

5/4/24

(Patil Pranjal Lahen Singh)
Additional Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi