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

No. F.DE.15(910)/PSB/2022/ 6591-6595 **Dated:** 23/08/22

ORDER

WHEREAS, **St. Margaret Sr. Sec. School (School ID-1413219), D-Block, Prashant Vihar, Rohini, Delhi - 110085** (hereinafter referred to as "**the School**"), run by the St. Margaret Education Society (hereinafter referred to as "**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 to the DoE. Such full statement of fee is required to indicate estimated income of the School to be derived from the fees and estimated operational expenses to be incurred during the ensuing year 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) read with Sections 17(3), 24 (1) and Rule 180 (3) of the above DSEAR, 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 DSEAR, 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 objectives 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 recognized 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 the Writ Petition No. 4109/2013 in the matter of Justice for All vs. 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 private unaided recognized Schools to whom land has been allotted by the DDA/ land owning agencies.

AND WHEREAS, accordingly, the DoE vide order No. F.DE.15 (40)/PSB/2019/2698-2707 dated 27.03.2019, directed to all the private unaided recognized Schools, running on the land allotted by the 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 session 2018-19 and 2019-20.

AND WHEREAS, in pursuance to order dated 27.03.2019 of the DoE, the School submitted its proposal for enhancement of fee for the academic session 2019-20. Accordingly, this Order dispenses the proposal for enhancement of fee submitted by the School for the academic session **2019-20**.

AND WHEREAS, in order to examine the proposals submitted by the Schools for fee increase for justifiability or not, the DoE has deployed teams of Chartered Accountants at HQ level who has evaluated the fee increase proposals of the School carefully in accordance with the provisions of the DSEAR, 1973, and other Orders/ Circulars issued from time to time by the DoE for fee regulation.

AND WHEREAS, in the process of examination of fee hike proposal filed by the aforesaid School for the academic session 2019-20, necessary records and explanations were also called from the School through email. Further, the School was also provided an opportunity to be heard on 19.07.2022 and 03.08.2022 to present its justifications/ clarifications on fee increase proposal including on the audited financial statements. Based on discussion, the School was further asked to submit necessary documents and clarification on various issues discussed during the personal hearing.

AND WHEREAS, the response of the School along with documents submitted by the school for fee increase, were evaluated by the team of Chartered Accountants; the key observations noted are as under:

A. Financial Observations

1. As per Appendix II to Rule 180(1) of DSER, 1973, the school is required to submit final accounts i.e. receipts and payment account, income and expenditure account and balance sheet of the preceding year duly audited by a Chartered Accountant by 31st July.

   Para 1 of Standard on Auditing (SA) 700 (Revised) on 'Forming an Opinion and Reporting on Financial Statements' issued by the Institute of Chartered Accountants of India states "*This Standard on Auditing (SA) deals with the auditor's responsibility to form an opinion on the financial* *statements. It also deals with the form and content of the auditor's report issued as a result of an audit of financial statements."*

On account of number of complaints received by the Institute of Chartered Accountants of India (ICAI) regarding signatures of Chartered Accountants (CAs) are being forged by non-CAs and corresponding findings by ICAI that financial documents/certificates attested by third person misrepresenting themselves as Chartered Accountants (CA) are misleading the Authorities and Stakeholders, ICAI, at its 379th Council Meeting, made generation of Unique Document Identification Number (UDIN) mandatory for every signature of Full time Practising Chartered Accountants in phased manner for the following services:

- All Certificates with effect from 1 Feb 2019
- GST and Income Tax Audit with effect from 1 Apr 2019
- All Audit and Assurance Functions with effect from 1 Jul 2019

Therefore, generation of UDIN has been made mandatory for all audit and assurance functions like documents and reports certified/ issued by practising Chartered Accountants from 1 Jul 2019. The UDIN system has been developed by ICAI to facilitate its members for verification and certification of documents and for securing documents and authenticity thereof by Regulators.

Further, ICAI issued an announcement on 4 June 2019 for the attention of its Members with the requirement of mentioning UDIN while signing the Audit Reports effective from 1 Jul 2019, which stated "*With a view to bring uniformity in the manner of signing audit reports by the members of ICAI, it has been decided to require the members of ICAI to also mention the UDIN immediately after the ICAI's membership number while signing audit reports. This requirement will be in addition to other requirements relating to the auditor's signature prescribed in the relevant law or regulation and the Standards on Auditing.*"

The financial statements submitted by the school for FY 0218-19 and 21019-20 did not include separate Audit Reports. Rather, the auditor certified the Balance Sheet and Income and Expenditure Account citing that it exhibits a true and fair view of school affairs accordingly to the best of information and explanation given to them. This indicates the auditor did not issue a proper audit opinion as per the requirements of SA 700.

Further, the Receipt and Payment Account was not enclosed as part of the financial statements for FY 2018-19 & 2019-2020. Also, the Balance Sheet and Income and Expenditure Account for the FY 2018-2019 & 2019-20 which were certified by the Chartered Accountant did not cite UDIN, as mandated by ICAI. Therefore, the authenticity of the audit and audited financial statements for FY 2018-2019 & 2019-20 submitted by the school could not be verified.

While the school has not complied with the statutory requirement of submission of audited final accounts and has submitted unauthentic final accounts, these financial statements for FY 2018-2019 & 2019-20 have been taken on record by the Directorate and the same have been considered for evaluation of the fee increase proposal of the school for the academic session 2019-2020 assuming the same as unaudited/provisional financial statements. This issue was discussed with the school during a personal hearing wherein the school agreed to provide proper justification regarding UDIN and would submit the receipts and payment accounts for the aforesaid period. During the personal hearing, the school explained that the school had got the receipts and payment accounts from the statutory auditor and showed the same but did not submit the same for verification. Thus, it appears that the school is trying to hide some vital information from the department.

In view of the above, the School is hereby directed to confirm from the auditor whether UDIN was generated in respect of the audit opinion issued by the auditor on the financial statements of the school for FY 2018-2019 & 2019-20. If it was generated, the same should be mentioned by the school in its compliance report. In case, UDIN was not generated by the auditor, the school is directed to seek explanation from the auditor for not complying with the requirements notified by ICAI and get the said audit report and financial statements verified from the Institute of Chartered Accountants of India for its authenticity and validity.

Additionally, the school is directed to prepare complete set of financial statements including Receipt and Payment Account and the same should be audited in entirety by the Auditor by giving an opinion as per the format prescribed in SA 700. The school is further directed to ensure that the audit opinions are issued on its future final accounts by practicing Chartered Accountant, which must comply with the requirements enunciated by their regulatory body i.e. The Institute of Chartered Accountants of India. If the school is failing to comply with above mentioned direction, the accounts of the school shall be considered as unaudited and unauthenticated, accordingly necessary action U/s 24 of the DSEA, 1973 shall be taken against the school without giving any further opportunity of being heard.

The Directorate in its Order No. F.DE.15(517)/PSB/2022/3013-3017 dated 17 May 2022 issued to the school post evaluation of fee increase proposal for FY 2018-19, mentioned that financial statements were not properly authenticated since the schedules and notes to account annexed to the financial statements were neither signed nor initialled either by the representative of the school or by the auditor. Thus, the authenticity of the financial statements and financial information included therein could not be confirmed. Although, the school has subsequently got the signed all schedules and presented the same. However, it was noted that totalling of income expenditure for FY 2019-20 was not correct. On bringing out these facts in the knowledge of the school management, the school submitted corrigendum letter from the auditor mentioning that it was due to typo error and the same will be taken care in future. Therefore, the school is hereby directed pay due care while preparing and presenting the financial statements.

2. Rule 180(1) of DSER, 1973, requires *every unaided recognised private school shall submit returns and documents in accordance with Appendix II* by 31 July of each year. The Appendix II to Rule 180(1) states that the school is required to submit the following documents:

   a. Budget estimates of receipts and payment of ensuring year.
   b. Final accounts i.e., receipts and payments account, income and expenditure and balance sheet of the preceding financial year, (duly audited by the Chartered Accountants).
   c. Enrolment of students as on 30 April.
   d. Pattern of concession/scholarship, etc.
   e. Staff statements
   f. Schedule of fees/ fines/funds, etc.
   g. Statement of showing the dates of disbursement of salaries.

Further, Directorate vide Order No. F.DE-15/ACT-I/WPC-4109/PART/13/7905-7913 dated 16 April 2016 has specified the returns and documents to be submitted by the private unaided recognised school. As per the aforesaid order "*the format of the return and documents to be submitted by schools under Rule 180 read with Appendix –II of 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.*"

On review of the audited financial statements for FY 2016-17 to FY 2019-2020 submitted by the school, it has been noted that the school has not submitted audit reports and receipt and payment account along with the audited financial statements. Apart from the above, the school has not reported the previous year's figures in its schedules due to which comparative figures cannot be verified.

3. Post personal hearing, the school submitted salary arrears of INR 7,09,04,290 pending for payment from January 2016 to July 2021. However, salary arrears until March 2019 were INR 3,65,95,100 as per the DoE Order No. F.DE.15(517)/PSB/2022/3013-3017 dated 17 May 2022 was issued to the school post evaluation of fee increase proposal for FY 2018-19. Thus, there was a sudden increase in salary arrears by INR 3,43,09,190 in the next 15 months, raising doubts about the figures submitted by the school. Form review of the documents submitted by the school with respect to the salary arrears following major observations have been noted:

   a. The salary arrears were calculated for 72 employees from January 2016 to July 2021. However, as per the staff statement of March 2020 submitted by the school, there were 62 employees only. Based on the minutes of the School Management Committee (SMC), it has been noted that certain employees have already left school and there were new joiners as well during that period. However, the effect of such changes in employee data was not considered by the school while calculating the salary arrears. During personal hearing, this was discussed with the school and the school was asked to submit the revised salary arrears payable to the employees which the school has not submitted. Accordingly, based on the information available on record, it has been noted that the school has inflated its salary arrears by INR 82,55,230 for 10 employees, which has been excluded from the total salary arrears of the school.

   b. While reviewing the salary arrears calculation submitted by the school, a peculiar situation emerged where the pay band was not fixed as per the recommendation of the 7th CPC. Thus, it appears that the school has computed the salary arrears in an arbitrary manner with the clear intention to inflate the figures of salary arrears without any base in order to get the fee hike from the department at any cost.

Sl. No.	Job Title	Pay Band
1.	Nursery Teachers	1900
2.	Computer Teacher	2800
3.	Lab Assistant	1800
4.	Driver, Peon, Gardner	1300

   c. The review of the arrears calculation sheet also revealed that the school has computed DA on conveyance @119% with effect from January 2016 to June 2017, while as per the implementation guidelines of 7th CPC, this DA was not applicable for this period. This issue was discussed with the school during personal hearing wherein the school accepted its mistake and agreed to submit the revised calculation. The school instead of submitting revised salary calculation for all employees, has submitted calculation for 10 employees only reiterating almost similar figures, indicating that the school is now trying to hide its mistake and in order to avoid rigorous scrutiny from the department opted out not to submit the revised calculation for verification.

d. In order to increase the amount of salary arrears, the school has intentionally decreased the gross salary payable to the employees of the 6th CPC from April 2018. So that the differential figures can be increased.

e. Generally, a similar pay band is fixed for the teachers with the same qualifications. The deviation may arise only in cases where employees are eligible for MACP. However, cases have been noted where different pay bands were fixed for the teachers with the same qualifications. However, the school has not provided any justification for such differences. An illustrative list is given below:

Qualification	Pay Band	No. of Teacher	Pay Band	No. of Teacher
PGT	5400	6	4800	3
TGT	4800	4	4600	13
PRT	4200	14	-	-

Based on the aforesaid findings, it appears that the school has deliberately submitted arbitrary figures for salary arrears payable with the ulterior motive of getting the fee hike from the department. The school was provided another opportunity to be heard on 03.08.2022 wherein all the issues listed above were discussed with the school at length and the school was asked to submit its response. The school, instead of rectifying its mistake, had submitted details of 10 employees only, which was worse than the computation of salary arrears submitted by the school earlier.

In view of the above- mentioned findings, the figures of salary arrears submitted by the school is not reliable at all and it appears that the school has been submitting similar kind of details to the department in the earlier years as well. While the school has proposed salary expenditure of INR 6,16,34,744 which is more than 25% more of actual salary expenditure incurred by the school during the previous FY 2018-19.

4. 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.*"

Moreover, the Hon'ble High Court of Delhi in its Judgment dated 30.10.1998 in case of Delhi Abibhavak Mahasangh concluded that "*Tuition Fee cannot be fixed to recover capital expenditure to be incurred on the properties of the Society*". Also, clause (vii) of order No. F.DE/15/Act/2k/243/KKK/883-1982 dated 10.02.2005 issued by this Directorate states "*Capital Expenditure cannot constitute a component of financial fee structure.*

Clause 14 of the order no F.DE./15(56)/Act/2009/778 dated 11.02.2009 states "*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.

Accordingly, based on the aforementioned public notice and Hon'ble 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 the 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.

The Directorate, in its Order No. F.DE.15(517)/PSB/2022/3013-3017 dated 17 May 2022 issued to the school post evaluation of the fee increase proposal for FY 2018-19, noted that the School has utilized development funds for construction of corridors, classrooms, storage space, Lawn Tennis, etc. without complying with the above-mentioned provision. Accordingly, the school was directed to recover INR 56,70,590 from society, which is still pending for recovery. The school, instead of complying with the previous direction, has further, incurred capital expenditure of INR 19,08,024 on solar energy system in FY 2019-20 without complying with the above-mentioned provision. The school incurred this expenditure without complying with the requirement of Rule 177 of DSER, 1973.

Therefore, expenditure incurred by the school totaling to INR 75,78,614 has been considered as available funds with the school while deriving the fund position with the direction of recovering this amount from society within 30 days from the date of issue of this Order.

5. 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 Hon'ble 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.

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

Directorate Order No. F.DE.15(120)/PSB/2019/1907-1911 dated 22 Feb 2019 issued to the school post evaluation of the fee increase proposal for FY 2017-2018, noted that the school had a recoverable balance of INR 1,15,04,028 from society as on 31 Mar 2017. After adjustment of INR 4,99,001 towards value of land and INR 21,04,894 towards value of building which was transferred by the society to school, INR 1,41,07,923 (INR 1,15,04,028 plus INR 4,99,001 plus INR 21,04,894) was recoverable from society. On further analysis of the financial statements submitted by the school, it was noted that the balance with society and other schools/institutions under the same management of society were not appropriately reported which is indicated in the table below.

Particulars [As reported in its financial statements by the School]	FY 2015-2016	FY 2016-2017	FY 2017-2018	FY 2018-2019
St. Margaret Education Society	4,72,14,877	-	-	26,40,933
St. Margaret*	-	-	6,951,230	-
St. Margaret (Neemrana)	1,12,86,429	1,15,04,028	-	93,281
St. Margaret School (Derawal Nagar)	(17,418)	-	-	-
Total	**5,84,83,888**	**1,15,04,028**	**69,51,230**	**27,34,214**

* It appears that the school missed to mention complete name of the entity.

During personal hearing, the School was asked to provide complete ledger details of society and other schools/institutions run under the same society having financial transaction with them. However, the school has provided the selected ledger accounts as per its convenience with the clear intention to hide material information from the department to create hurdles in evaluating the correct fund position of the School. The ledger account provided by the school are tabulated below.

Name of Ledger	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
St. Margaret Education Society (PV)	✓	×	×	×
Neemrana Unit of St. Margaret Education Society	×	✓	×	×
St. Margaret Education Society (N)	✓	×	×	×
PV Unit of St. Margaret Education Society	×	×	×	✓

Based on the information provided by the School, amount recoverable society has been calculated as under.

Particulars	Amount in INR
Total amount recoverable from the Society as on 31.03.2016	5,84,83,887
Less:	

Particulars	Amount in INR
-Land and Building (after depreciation) *	22,98,685
-FDR	3,97,39,186
-Interest accrued	36,62,528
-Cash received	45,93,009
Total amount received in cash/kind from society	**5,02,93,408**
Add: Land and Building (after depreciation) *	22,98,685
Total amount recoverable from the Society as on 31.03.2019	**1,04,89,164**

*Land and building are the property of the Society hence cannot be considered as recovery. Further, the School has transferred the same to the Society in FY 2018-19.

Accordingly, the amount of INR 1,04,89,164 is still recoverable from society. Therefore, INR 1,04,89,164 has been considered as fund available with the School while deriving the fund position of the School and with the direction to the school to submit ledger account of the Society and other schools/institutions run under the same society for the aforementioned financial years together with the evidence of fund receipts.

6. Rule 177 of DSER, 1973 states that "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 management committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely

a. *award of scholarships to students,*
b. *establishment of any other recognised school, or*
c. *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.*

And the aforesaid savings 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 developmental nature;*
c. *The expansion of the school building or for the 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.*

On review of the financial statements, it has been noted that the school has paid scholarships to student during FY 2016-2017 to FY 2019-20, amounting to INR 5,62,772 which is not in accordance with the above-mentioned provisions considering that the school has not complied with the requirements of sub rule 2 of Rule 177.

Accordingly, the scholarship payments made by the school without complying with the requirements of rule 177 of DSEAR, 1973 is hereby added to the fund position of the school 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 issue of this order.

7. The Directorate of Education, in its Order No. DE.15/Act/Duggal.Com/ 203/99/23033-23980 dated 15 Dec 1999, indicated the heads of fee/ fund that recognised private unaided school can collect from the students/ parents, which include:

- Registration Fee
- Admission Fee
- Caution Money
- Tuition Fee
- Annual Charges
- Earmarked Levies
- Development Fee

Further, clause no. 9 of the aforementioned order states "*No fee, fund or any other charge by whatever name called, shall be levied or realised unless it is determined by the Managing Committee in accordance with the directions contained in this order ……*"

The aforementioned order was also upheld by the Hon'ble Supreme Court in the case of Modern School vs Union of India & Others.

Clause 17 of Order No. F.DE/15(56)/Act/2009/778 dated 11 Feb 2009 issued by this Directorate states "*No admission Fee of more than two hundred rupees per student, at the time of admission shall be charged. Admission Fee shall not be charged again from any student who is once given admission as long as he remains on the rolls of the school.*"

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 May 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,*"

The Directorate through its Order no. F.DE.15(120)/PSB/2019/ 1907-19011 dated 22 Feb 2019 issued to the school post evaluation of the proposal for enhancement of fee for FY 2017-2018 directed the school to stop collecting activity fee from students at the time of admission.

On review of audited financial statements for FY 2017-2018 to FY 2018-2019 and sample of fee receipts submitted by the school, it was observed that the school is continuing to collect one-time "Activity fee" of INR 965 from the students at the time of admission. No private recognised school can collect fee other than those prescribed in aforementioned order dated 15 Dec 1999. Further, collecting one-time charge from students at the time of admission of students takes the form of admission fee, which can be collected only up to an amount of INR 200. Thus, collection of one-time fee from students at the time of admission indicating that the school is engaging in profiteering and commercialisation of education.

The act of the school of charging unwarranted fee 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.

The school is hereby directed not to collect one-time activity fee from students at the time of admission or otherwise with immediate effect.

8. Accounting Standard 15 - 'Employee Benefits' issued by the Institute of Chartered Accountants of India states "*Accounting for defined benefit plans is complex because actuarial assumptions are required to measure the obligation and the expense and there is a possibility of actuarial gains and losses.*"

Further, the Accounting Standard defines Plan Assets (the form of investments to be made against liability towards retirement benefits) as:

1. Assets held by a long-term employee benefit fund; and
2. Qualifying insurance policies.

Further, Para 57 of AS 15 states that "*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.*"

Furthermore, Para 60 of Guidance Note on Accounting by Schools (2005) issued by the Institute of Chartered Accountants of India states "*A defined benefit scheme is a scheme under which amounts to be paid as retirement benefits are determined usually by reference to employee's earnings and/or years of service*".

An appropriate charge to the income and expenditure account for a year should be made through a provision for the accruing liability. The accruing liability should be calculated according to actuarial valuation. However, if a school employs only a few persons, say less than twenty, it may calculate the accrued liability by reference to any other rational method. The ensuing amount of provision for liability should then be invested in *"plan assets"* as per AS-15 issued by ICAI.

On review of the audited financial statements for FY 2018-19 submitted by the school, it has been noted that the school has made a total provision of INR 4,98,55,222 towards gratuity and leave encashment respectively as on 31 Mar 2019 in accordance with the LIC valuation report. The School further, submitted that it has invested INR 4,98,55,222 in an investment which qualifies as a plan asset within the meaning of AS-15 and reported the same in its audited financial statements. Therefore, the total amount invested by the School in planned assets towards gratuity and leave encashment of INR 4,98,55,222 have been considered while deriving the fund position of the school.

B. Other Observations

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

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 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.*"

Basis the presentation made in the financial statements for the FY 2017-2018 and FY 2018-2019 submitted by the school, it was noted that while the school transferred an amount equivalent to the purchase cost of the fixed assets purchased from development fund to "Development Fund Utilised" account, it did not transfer amount equivalent to the amount of depreciation from "Development Fund Utilised" account as income to the Income and Expenditure Account as indicated in the guidance note cited above.

Further, from the fixed assets schedule enclosed with the financial statements for FY 2018-2019, it was noted that the school had reported sale/disposal of certain assets purchased out of development fund of INR 18,750, which though were adjusted from the value of fixed assets were not deducted from the "Development Fund Utilised" account. Also, in the said fixed assets schedule, the school indicated the same amount as loss on sale of assets. However, the said loss was not reported in the Income and Expenditure Account. Further, details were not provided by the school regarding sale proceeds of such assets, which was also not added back to the "Development Fund" account. This has resulted in over statement of "Development Fund Utilised" account and under-statement of "Development Fund" account as on 31 Mar 2019.

Basis the presentation made in the financial statements for FY 2018-2019 submitted by the school, it was noted that the school has not reported depreciation reserve as on 31 Mar 2019 (of INR 1,35,86,993) equivalent to the amount of accumulated depreciation (of INR 1,35,29,738) reported in the fixed assets schedule annexed to the financial statements for FY 2018-2019. The difference of INR 57,255 relates to interest credited to depreciation reserve by the school during FY 2017-2018. The school has erred in adding interest earned on fixed deposits to depreciation reserve since the depreciation reserve represents accumulated depreciation on fixed assets and does not have any connection with interest earned on fixed deposits. Accordingly, the same require rectification.

The direction for follow the accounting treatment as indicated in the guidance note cited above issued vide Order no. F.DE.-15(120)/PSB/2019/1907-1911 dated 22 Feb 2019 issued to the school post evaluation of proposal for enhancement of fee for FY 2017-2018. Thus, the school did not follow the accounting treatment as indicated in the guidance note cited above.

The school is directed to make necessary rectification entries relating to development fund, development fund utilised, depreciation reserve, etc. to comply with the accounting treatment indicated in the Guidance Note.

2. 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' (GN 21) 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 incurrence 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 was noted that the school charges earmarked levies in the form of Transport Fees from students. From the financial statements for FY 2018-2019, it was noted that the school created a separate fund for transport fee.

It was further noted that the school failed to disclose income and expenses in relation to transport in the Income and Expenditure Account rather it was presented directly in designated funds maintained by the school as Transport Fund. While these are revenue receipts collected by school, the school did not route the incomes and expenses in relation to these fee heads through income and expenditure account, which is an incorrect accounting practice in view of the requirements included in Guidance Note cited above.

Also, the school did not include transport fee in its the proposal for fee increase for FY 2018-2019 and fee structure submitted to the Directorate.

The school has been incurring losses (deficit) that has been met from other fees/income, which was also mentioned in Directorate Order No. F.DE.15 (120)/PSB/2019/1907-1911 dated 22 Feb 2019 issued to the school post evaluation of the fee increase proposal for FY 2017-2018. Details of calculation of deficit, based on breakup of income and expenditure provided by the school for FY 2017-2018 towards transport fee is given below:

Financial Year	Income (INR)	Expenses (INR)	Surplus/(Deficit) (INR)
	A	B	C=A-B
2017-2018	21,76,585	26,12,650	(4,36,065)
2018-2019	26,60,440	26,92,250	(31,810)

The school should evaluate costs incurred against the 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. Also, the school is directed to disclose all incomes and expenses in its financial statements and submit details of all earmarked levies collected from students in the proposal and fee structure submitted to the Directorate.

3. The School was directed through the Directorate's order F.DE.-15(120)/PSB/2019/1907-1911 dated 22 Feb 2019 issued to the school post evaluation of the proposal for enhancement of fee for FY 2017-2018 in respect of creation and submittion of fixed deposit in the joint names of Deputy Director of Education and the Manager of the School equivalent to the amount of 4 months salary reserve in accordance with the provisions of the Right to Education Act, 2009.

The school had accounted for a provision of INR 1,70,37,477 for salary reserve equivalent to 4 months' salary as on 31 March 2019 in the books of accounts and invested INR 2,03,67,249 in the form of FDR against these provisions. However, this investment was not in the joint names of Deputy Director of Education and the Manager of the school. Therefore, these FDR's have been considered as free reserve and have not been adjusted while deriving the fund position of the school for FY 2019-20.

Further, the School has proposed provision for salary reserve of INR 29,59,962 without complying with above-mentioned requirements. Therefore, this amount has been excluded from the total budgeted expenditure while deriving the fund position of the School with the direction to make investment in the name of in the joint names of Deputy Director of Education and the Manager of the school.

4. As per the land allotment letter issued by the Delhi Development Authority to the Society in respect of the land allotted for the school, it shall ensure that percentage of freeship from the tuition fees, as laid down under rules by the Delhi Admn. from time to time, is strictly complied. The school shall ensure admission to the students belonging to weaker sections to the extent of 25% and grant freeship to them.

From the breakup of students provided by the school, it had admitted students under Economically Weaker Section (EWS) Category as under:

Particulars	FY 2016-2017	FY 2017-2018	FY 2018-2019
Total No. of Students	1,823	1,848	1,875
No. of EWS students	330	355	382
% of EWS students to total students	18.10%	19.21%	20.37%

The school has not complied with the requirements of land allotment and should thus take comprehensive measures (including enhancement of EWS seats) to abide by the conditions of the land allotment letter issued by the Delhi Development Authority.

5. The school submitted a Fixed Asset register (FAR), however, the same was not prepared in proper format as it only captured the name of the asset, period of purchase, depreciation rate and amount. The school has not included complete details of assets in the FAR such as serial number, location, invoice number, supplier, identification number, depreciation, etc. to facilitate identification of asset and documenting complete details of assets at one place.

Accordingly, the school is directed to update the FAR with relevant details mentioned above. The above being a procedural finding, no financial impact is warranted for deriving the fund position of the school.

6. As per 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.

It has been noted that no such disclosure for FY 2018-19 has not been available on records with us. It is directed to the School to provide such details in compliance with AS-18 (Related party disclosures) to us within 30 days from the date of issue of this order.

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 year 2019-20 amounting to INR **9,60,33,053** out of which cash outflow in the year 2019-20 is estimated to be INR **8,49,16,027**. This results in net surplus of INR **1,11,17,026**. The details are as follows:

Particulars	**Amount in INR**
Cash and Bank balances as on 31.03.19 as per Audited Financial Statements of FY 2018-19	1,11,15,158
Investments as on 31.03.19 as per Audited Financial Statements of FY 2018-19	6,47,55,060
Liquid Fund as on 31.03.2019	**7,58,70,218**
Add: Additions made to the building **(refer financial observation no 4)**	75,78,614
Add: Receivable from the Society **(refer financial observation no 5)**	1,04,89,164
Add: Scholarship given to students **(refer financial observation no 6)**	5,62,772
Add: Fees for FY 2019-20 as per audited financial statements **(refer note 1)**	5,75,26,148
Add: Other income for FY 2019-20 as per audited financial statements **(refer note 1)**	21,21,244
Total Available Funds for FY 2019-20	**15,41,48,160**
Less: FDR with joint name of School Manager and DOE as on 31.03.2019	1,33,754
Less: FDR with joint name of School Manager and CBSE as on 31.03.2019	19,16,605
Less: Development Fund as on 31.03.2019	62,09,226
Less: Earmarked Investment with LIC towards Gratuity and Leave Encashment **(refer financial observation no 8)**	4,98,55,522
Less: Depreciation Fund **(refer Note 2)**	
Net Available Funds for FY 2019-20	**9,60,33,053**

Particulars	Amount in INR
Less: Expenditure as per audited financial statement of FY 2019-20 **(refer Note 3)**	**7,28,41,309**
Less: Arrears of salary as per 7th CPC from 01.04.2019 to 31.03.2020 **(refer financial observation no 3)**	**1,20,74,718**
Estimated Surplus	**1,11,17,026**

Notes:

1. Fee and income as per audited financial statement of FY 2019-20 has been considered.

2. 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 or any other head of fee for investments against depreciation reserve fund.

   Further, Clause 7 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:

   a. Not to charge development fee for more than 15% of tuition fee.
   b. Development fee will be used for purchase, upgradation and replacement of furniture, fixtures, and equipment.
   c. Development fee will be treated as capital receipts.
   d. 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 Modern School Vs Union of India & Ors.: 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 of INR 1,35,86,993 as reported by the school in the audited financial statements for the FY 2018-19 has not been considered while deriving the fund position of the school.

3. Based upon financial statement of FY 2019-20, all income and expenditure has been considered except the following:

Income Head	Amount Disallowed	Remarks
Depreciation on development asset	1,83,55,192	Being a notional in nature. Hence not considered.
Expense Head	**Amount Disallowed**	**Remarks**
Transportation expense	1,17,722	Since, the School has created separate fund for transportation. Therefore, no income and expense has been considered while deriving the fund position.
Depreciation	49,53,201	Being a non-cash expense. Hence, can't be considered in fee hike proposal.

ii. The school has sufficient funds to carry on the operation of the school for the academic session 2019-20 on the existing fees structure. In this regard, the directions issued by the Directorate of Education vide circular no. 1978 dated 16.04.2010 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."

WHEREAS, in the light of above evaluation which is based on the provisions of DSEA, 1973, DSER, 1973, guidelines, orders and circulars issued from time to time by this Directorate, it was recommended by the team of Chartered Accountants along with certain financial and other observations that the sufficient funds are available with the school to carry out its operations for the academic session 2019-20. Accordingly, the fee increase proposal of the school may be rejected.

AND WHEREAS, it has been noted that the School has paid INR 1,86,30,550 towards construction of building, scholarship to students, Receivable from Society, which is not in accordance with clause 2 of public notice dated 04.05.1997 and Rule 177 of DSER, 1973 and other orders. Thus, the school is directed to recover INR 1,86,30,550 from the society. The receipt of the above amount along with the copy of the bank statement showing the receipt of above-mentioned amount should be submitted with DoE, in compliance of the same, within thirty days from the date of issuance of this order. Non-compliance of this shall be taken up as per DSEA&R, 1973.

AND WHEREAS, recommendation of the team of Chartered Accountants along with relevant materials were put before the Director (Education) for consideration 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 has found that funds are available with the school for meeting financial implication for the academic session 2019-20.

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

Accordingly, it is hereby conveyed that the proposal for enhancement of fee for session 2019-20 of **St. Margaret Sr. Sec. School (School ID-1413219), D-Block, Prashant Vihar, Rohini, Delhi - 110085** 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 2019-20. In case, the School has already charged increased fee during FY 2019-20, 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 ensure payment of salary is made in accordance with the provision of Section 10(1) of the DSEA, 1973. Further, 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 order is issued with the prior approval of the Competent Authority.

(Yogesh Pal Singh)
Dy. Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi

To:
The Manager/ HoS
St. Margaret Sr. Sec. School
School ID-1413219
D-Block, Prashant Vihar, Rohini
Delhi - 110085

No. F.DE.15(910)/PSB/2022/ 6591-6595 Dated: 23/08/22

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 (North West-B) to 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.

(Yogesh Pal Singh)
Dy. Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi