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

No. F.DE.15 (1184)/PSB/2023/ 1107 - 1112 **Dated: 02/02/23**

Order

WHEREAS, **Maxfort School (School ID - 1411253), Parwana Road, Pitampura, New Delhi - 110034** (hereinafter referred to as "**the School**"), run by The Tandon Educational 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.

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 Delhi School Education Act, 1973 (hereinafter read as ***'the Act'***) with the Director. Such statement will indicate estimated income of the school derived from fees, estimated current operational expenses towards salaries and allowances payable to employees etc in terms of Rule 177(1) of the Delhi School Education Rules, 1973 (hereinafter read as ***'the Rules'***).

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

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

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

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

Thus, the Director (Education) has the authority to examine the full statement of fees filled under section 17(3) of the DSEA, 1973 and returns and documents submitted under section 18(5) of DSEA, 1973 read with rule 180 (1) of DSER, 1973

AND WHEREAS, besides the above, the Director (Education) is also required to examine and evaluate the fee hike proposal submitted by the private unaided recognized schools which have been allotted land by the DDA/ other land-owning agencies with the condition in their allotment to seek prior approval from Director (Education) before any increase in fee.

AND WHEREAS, besides the above, the Hon'ble Supreme Court in the judgment dated 27.04.2004 passed in Civil Appeal No. 2699 of 2001 titled Modern School Vs. Union of India and others has conclusively decided that under section 17(3), 18(4) read along with rule 172, 173, 175 and 177 of the Rules, Directorate of Education has the authority to regulate the fee and other charges to prevent the profiteering and commercialization of education.

AND WHEREAS, it was also directed by the Hon'ble Supreme Court to the Director of Education in the aforesaid matter titled Modern School Vs. Union of India and others in Para 27 and 28 in case of Private unaided Schools situated on the land allotted by DDA at concessional rates that:

"27 (c) It shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with...

28. We are directing the Director of Education to look into the letters of allotment issued by the Government and ascertain whether they (terms and conditions of land allotment) have been complied with by the schools.......

.....If in a given case, Director finds non-compliance of above terms, the Director shall take appropriate steps in this regard."

AND WHEREAS, the Hon'ble High Court of Delhi vide its judgement dated 19.01.2016 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 Director of Education to ensure the compliance of term, if any, in the letter of allotment regarding the increase of the fee by all the recognized unaided schools which are allotted land by DDA/ land owing agencies.

AND WHEREAS, accordingly, the DoE vide Order No. F.DE-15(40)/PSB/2019/4440-4412 dated 08.06.2022, directed all the private unaided recognized schools, running on the land allotted by DDA/other land-owning agencies at 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 2022-23

AND WHEREAS, in pursuance to Order dated 08.06.2022 of the DoE, the School submitted its proposal for enhancement of fee for the academic session 2022-23. Accordingly, this Order dispenses the proposal for enhancement of fee submitted by school for the academic session 2022-23.

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 DoE.

AND WHEREAS, in the process of examination of the fee hike proposal filed by the aforesaid school, necessary records and explanations were also called from the school through email dated 29.08.2022. The school was also provided an opportunity to be heard on 22.09.2022 to present its justifications/clarifications on the fee increase proposal. Based on the discussion with the school during a personal hearing, the school was further asked to submit the necessary documents and clarification on various issues noted. In the aforesaid personal hearing, compliance of Order No. 15/ (785)/PSB/2022/4939-4943 dated 23.06.2022 issued for FY 2019-20 were also discussed with the school and the school's submissions were taken on record

AND WHEREAS, on receipt of clarification as well as documents uploaded on the web portal for the fee hike post personal hearing, the fee hike proposal was evaluated by the team of Chartered Accountants and the key suggestions noted for improvement by the school are hereunder:

A. **Financial Suggestion for Improvements**

1. Clause No. 2 of Public Notice dated 04.05.1997 states "*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 30.10.1998 titled Delhi Abibhavak Mahasangh concluded states "*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 10.02.2005 issued by this Directorate states "*Capital expenditure cannot constitute a component of the financial fee structure.*"

   Also, Rule 177 of DSER, 1973 states "*Income derived by an unaided recognized school by way of fees shall be utilized in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school. Provided that, savings, if any, from the fees collected by such school may be utilized by its management committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely award of scholarships to students, establishment of any other recognized school, or assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run. 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.*

   Therefore, based on the above-mentioned provisions, the cost relating to land and construction of the school building should be borne by the society running the school and school funds, i.e., fees collected from the students should not be used for the purchase of land and construction of the school building. In this regard, it is also important to mention that society was allotted an institutional land at very low cost compared to the price of commercial and as well as residential land of that nearby locality. The reason for allotment of land as such low cost was the society came up with the offer to do noble work in the field of education and run the school in Delhi on charity and on a "no profit and no loss" basis. In its offer the society also undertook to execute this work from its resources or by arranging funds through donations, subscriptions, or any other legal possible manner. Based on the noble grounds, the DoE had recommended to the land-owning agencies for-allotment of land to society which would otherwise not be possible for the society to have such a prime land at this cost in such posh location.

Accordingly, if the DoE finds any deviation or non-compliance in any condition of land allotment letter, the society as well as the school are bound to comply and honour that immediately as per the direction of the DoE. Society cannot always claim the protection of Article 19(1)(g), 21 & 30 of the Constitution of India for non-interference by the DoE. Because the main source (i.e., land) which was required to establish and run the school was supported by DoE by recommending to land owning agency to allotment the land to the society. After considering the recommendation of the DoE, a clause was included in the land allotment letter of the school that the school shall not increase the fee without the prior sanction of the Director (Education) and shall follow the provisions of the Delhi School Education Act/Rules, 1973 and other instructions issued by the department from time to time.

In its Order No. DE 15/(785)/PSB/2022/4939-4943 dated 23. 06. 2022, issued to the school post evaluation of fee hike proposal for the academic session 2019–20, the DoE noted that the school had repaid a loan and interest on the loan totaling INR 5,76,99,305 during the FY 2014-15 to FY 2018-19, taken for the construction of the school building. It was also noted that the above expenses were incurred by the school without complying with the aforesaid provisions. Therefore, the school was directed to recover INR 5,76,99,305 from society, which is still pending for recovery. Yearly payments made by the school have been tabulated below.

Financial Year	Principal	Interest	Total (INR)
2014-15	55,86,368	61,55,097	1,17,41,465
2015-16	35,96,021	36,33,424	72,29,445
2016-17	1,82,48,798	27,57,624	2,10,06,422
2017-18	51,01,000	17,79,922	68,80,922
2018-19	88,99,000	19,42,051	1,08,41,051
Total	**4,14,31,187**	**1,62,68,118**	**5,76,99,305**

Apart from the above, it was also noted that the school had incurred additional expenditure of INR 53,65,760 on renovation of the school buildings, swimming pool, and tennis court during the financial year from FY 2014–15 to FY 2017–18. From the record submitted by the school, it was also noted that these expenses were capital expenditures and were incurred without complying with the requirements of the above-mentioned provisions. Therefore, the school was directed to recover INR 53,65,760 from society, which is still pending for recovery.

A review of the record submitted by the school revealed that the school has not implemented the recommendation of the 7th CPC and has not invested any amount in plan assets for the payment of retirement benefits to its staff. This indicates that the school has effectively depleted its school funds in order to obtain the fee increase from the department.

In view of the above, total school funds utilized by the school for the construction of school buildings totaling INR 6,30,65,065 *(i.e., INR 5,76,99,305 plus INR 53,65,760)* is recoverable from the society, being the responsibility of the society met by the school. Accordingly, INR 6,30,65,065 has been included while deriving 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 will be viewed seriously, and appropriate action will be taken against the school under Section 24(4) of the DSEA, 1973, without providing the school with further opportunity to be heard.

2. 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 its Order No.DE 15/ (785)/PSB/2022/4939-4943 dated 23.06.2022 issued to the school post evaluation of a fee hike proposal for the academic session 2019–20, noted that the school had repaid loans and interest thereon totaling INR 1,31,21,778. The aforesaid loan was taken for the purchase of vehicles from FY 2014–15 to FY 2016–17. It was also noted that the school paid INR 2,68,000 in FY 2018–19 towards the down payment.

The school incurred the aforementioned expense without complying with the aforementioned provisions. It was also noted that the school is not following fun-based accounting and has not created separate funds for transport service. However, the income and expense from transportation services were evaluated from FY 2014–2015 to FY 2018–2019 (provided below), and it was noted that the school had generated surpluses from the transportation services. However, this surplus was insufficient to cover the full cost of the vehicles as well as the instalments on loan. Accordingly, the school was directed to recover INR 1,49,14,290 *(net deficit)* of transport facility from the society which is still pending for recovery.

Calculation surplus/ deficit of transport facility						
Particulars	**FY 2014-2015**	**FY 2015-2016**	**FY 2016-2017**	**FY 2017-2018**	**FY 2018-2019**	**Total (INR)**
Income						
Transport Fees (A)	1,19,23,136	1,19,19,250	1,20,12,624	1,11,33,923	1,02,05,661	5,71,94,594
Expenses						
Transport Expenses	64,23,942	46,15,258	65,72,872	76,76,812	65,98,297	3,18,87,181
Vehicle Maintenance	39,48,417	43,55,853	40,25,615	30,48,546	26,37,663	1,80,16,094
Insurance	11,94,097	4,30,206	6,90,579	6,79,636	6,74,944	36,69,462
Total Expenses (B)	**1,15,66,456**	**94,01,317**	**1,12,89,066**	**1,14,04,994**	**99,10,904**	**5,35,72,737**
Surplus (C)=(A-B)	**3,56,680**	**25,17,933**	**7,23,558**	**(2,71,071)**	**2,94,757**	**36,21,857**
Principal Loan Repayment (D)	42,15,753	42,54,533	23,72,568	32,27,342	11,88,835	1,52,59,031
Interest on vehicle Loan (E)	11,76,327	7,22,965	3,79,632	4,21,187	3,09,005	30,09,116

Calculation surplus/ deficit of transport facility						
Particulars	**FY 2014-2015**	**FY 2015-2016**	**FY 2016-2017**	**FY 2017-2018**	**FY 2018-2019**	**Total (INR)**
Down payment for new vehicle (F)	-	-	-	2,68,000	-	2,68,000
Net Deficit after adjusting loan and interest payment (G)=(C-D-E-F)	**(50,35,400)**	**(24,59,565)**	**(20,28,642)**	**(41,87,600)**	**(12,03,082)**	**(1,49,14,290)**

Review of the documents submitted by the school revealed that the school, instead of recovering the aforesaid amount, has made further payments of INR 18,72,000 toward principal repayment and interest thereon. It is also important to mention here that the school has not implemented the recommendation of the 7th CPC and has not invested any amount in plan assets for the payment of retirement benefits to its employees. Therefore, the school has been utilizing school funds to create assets to provide services to the selected students, which is not permissible.

Therefore, total amount of INR 1,67,86,590 (i.e., *INR 1,49,14,290 plus INR 18,72,000*) utilized by the school for purchase of vehicles by way of repayment of loan and interest thereon is recoverable from the society and has been included in the fund position with 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 direction will be viewed seriously and appropriate action against the school under Section 24(4) of the DSEA, 1973 shall be taken without providing further opportunity to be heard.

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."

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.*"

A review of the audited financial statements for FY 2021-22 revealed that the school recorded provision for retirement benefits of INR 3,19,78,643, i.e., INR 1,28,71,399 for gratuity plus INR 1,91,07,244 for leave encashment, in the audited financial statements, whereas according to the actuarial valuation report, the total provision for retirement benefits was INR 1,92,86,657 *(INR 1,30,50,812 for gratuity plus INR 62,35,845 for leave encashment)*. As a result, the school reported an excess provision of INR 1,26,91,986 in the audited financial statements for FY 2021–22.

Gratuity and leave encashment are statutory liabilities that the school is required to pay to the eligible employees at the time of retirement or resignation, as the case may be. However, over the years, the department has noticed that most of the schools have been recording liabilities for retirement benefits in their financial statements without making investments in Plan Asset, either due to paucity of funds or otherwise. Therefore, many of the schools are keeping the retirement benefit unfunded, which is not in the true spirit of the law and also defeats the objectives of maintaining books of accounts as per generally accepted accounting principles (GAAP) as directed by the Hon'ble Supreme Court in its landmark judgement titled Modern School vs. Union of India and Ors. Therefore, it has been felt that in order to protect the statutory dues of the employees, instead of disallowing the full liability on account of non-investment in Plan Asset, it would be rational to spread this liability over the period of 14 years on the assumption that normally a student studies 14 years in the school. This will not only allow the schools a breather to make an investment in Plan Asset gradually but also lower down the sudden financial burden of fee on the parents/students on account of huge liability for retirement benefits.

Accordingly, an amount of INR 13,77,618 (i.e., 1/14 of INR 1,92,86,657) has been considered while deriving the fund position of the school, with the direction to the school to invest the aforesaid amount in plan assets in accordance with AS-15, recognize the liability towards leave encashment based on the actuarial valuation obtained from the valuer and submit the compliance report within 30 days from the date of issue of this order. In case the school fails to comply with the above directions, it shall not be allowed further installments, and the amount so allowed to the school shall be recovered from the society or school management along with interest while evaluating the fee increase proposal for the subsequent year.

4. Clause 14 of this Directorate's 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, 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 from this fund, will be kept in a separately maintained Development fund Account.*"

A review of the audited financial statements for FY 2021-22 revealed that the school reported a development fund balance of INR 1,86,63,295 with no cash/bank balance against the development fund.

During the personal hearing, the school explained that, due to a lack of funds, it had used development funds to pay salaries and salary-related costs but had failed to make the proper accounting entries in the books of accounts, resulting in a mismatch of fund balance with cash and bank balance. As a result, the closing balance of the development fund was not considered when determining the school's fund position, and the school was directed to correct its books and accounts by making the necessary accounting entries. The school is also directed to ensure that development fees and funds are collected and used in accordance with clause 14 of the order dated February 11, 2009.

B. Other Suggestion for Improvements

1. 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/203/99/23033-23980 dated 15.12.1999 and Order No.F.DE, /15(56)/Act/2009/778 dated 11.02.2009, indicated the following types of fees 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 '*activity 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. Accordingly, the collection of activity fees indicates that the school is engaged in profiteering and commercialization of education.

As per Section 27 of the DSEA, 1973, the manager of the school is responsible to look after the operation of the school smoothly and to ensure compliance with the provision of the DSEAR, 1973 including the compliance of the High Court/Supreme Court and orders/circulars issued by the Directorate of Education from time to time in this regard. As the manager and principal have been bestowed with the power to ensure the school's proper functioning, including ensuring the admission process transparently are jointly as well as in their personal capacity be responsible for levy and collection of capitation fee and any another unauthorized fee collected by the school.

Therefore, the school is directed to not charge capitation as mentioned above with immediate effect and submit the compliance within 30 days from the date of issue of this order. Non- compliance with this direction would be reviewed seriously and a necessary action against the school will be initiated U/s 24(4) of the DSEA, 1973 by the department.

2. 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. The school is further 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.

3. 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 concerned restricted fund account is treated as deferred income, to the extent of the cost of the asset, and is transferred to the credit of the income and expenditure account in proportion to the depreciation charged every year".

Taking the cognisance 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 charged 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.

However, the audited financial statements of the school revealed that the school has not been following para 99 of the GN 21. Because upon incurrence of the capital expenditure out of the development 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 is hereby 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.

4. *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. The documents submitted by the school for evaluation of the fee hike proposal were taken on record. Review of the audited financial statements and Independent Auditors Report for FY 2021-22 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 the majority of the content of the Independent Auditors' Report was missing, such as the auditors' and management's responsibilities.

In light of the foregoing, the school is hereby directed to strengthen its process for preparation and presentation of financial statements in accordance with the above-mentioned provisions. However, the audited financial statements submitted by the school have been considered for the evaluation of the fee hike proposal of the school.

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 2022-23 amounting to **INR 16,28,94,295** out of which cash outflow for the FY 2022-23 is estimated to be **INR 16,69,57,843.** This results in deficit of **INR 40,63,548** after meeting all expenditures. The details are as follows:

Particulars	**Amount (INR)**
Cash and Bank balances as on 31.03.2022 as per Audited Financial Statement of FY 2021-22	17,61,837
Investments as on 31.03.2022 as per Audited Financial Statement of FY 2021-22 **(Refer Note No. 1 Below)**	85,56,030
Liquid fund as on 31.03.2022	**1,03,17,867**
Add: Recovery from the society for expenditure incurred on construction of the school building **(Refer Financial Suggestion No. 1)**	6,30,65,065
Add: Recoverable from society for expenditure incurred on purchase of buses **(Refer Financial Suggestion No. 2)**	1,67,86,590
Add: Fees for FY 2021-22 as per Audited Financial Statements **(Refer Note No. 2 Below)**	9,07,92,506
Add: Other income for FY 2021-22 as per audited Financial Statements **(Refer Note No. 2 Below)**	4,47,137
Add: Additional income of annual charges and development fund **(Refer Note No. 2 Below)**	22,92,111
Less: Arrears of fee recorded in FY 2021-22 related to FY 2020-21. **(Refer Note No. 2 Below)**	1,08,73,333
Total available funds for FY 2022-23	**17,28,27,943**
Less: FDR in joint name of DDE and Manager	13,17,717
Less: FDR Lien against BG of JADSC	72,38,313
Less: Student Security Deposit	-
Less: Investment made with LIC against provision made for retirement benefits **(Refer Financial Suggestion No. 3)**	13,77,618
Less: Development Fund as per Audited Financial Statements of FY 31.03.2022 **(Refer Financial Suggestion No. 4)**	-
Less Depreciation reserve fund as on 31.03.2022 **(Refer Note No. 3 Below)**	-
Estimated Available Funds for FY 2022-23	**16,28,94,295**
Less: Budgeted Expenditure for FY 2022-23 **(Refer Note No. 4 and 5 Below)**	14,39,22,561
Less: Arrears of 7th CPC as provided by the school **(Refer Note No. 6 Below)**	2,30,35,282
Estimated Deficit	**40,63,548**

Note 1: The detail of fixed deposit held by the school as per the audited financial statements of FY is provided below:

S. No	Particulars	Amount INR	Remarks
1	FDR in Joint name of Manager and Directorate of Education	13,17,717	Considered separately.
2	Lien Against BG of JADSC	54,50,000	Considered separately.
3	Accrued Interest on FD	17,88,313	Considered separately.
	Total	**85,56,030**	

Note 2: The Department vide its order No.F.No.PS/DE/2020/55 dated 18.04.2020 and order No.F.No.PS/DE/2020/3224-3231 dated 28.08.2020 issued guidelines regarding the chargeability of fees during the pandemic COVID 2019. The department in both the above-mentioned orders directed to the management of all the private schools not to collect any fee except the tuition fee irrespective of the fact whether running on the private land or government land allotted by DDA/other government land owing agencies and not to increase any fee in academic session 2020-21 till further direction.

Further, the department in pursuance of the order dated 31.05.2021 in WPC 7526/2020 of Single Bench of the Hon'ble High Court of Delhi and interim order dated 07.06.2021 in LPA 184/2021 of the Division Bench of Hon'ble High Court of Delhi and to prevent the profiteering and commercialisation, directed to the management of all the petitioners private unaided recognised schools through its order No. F. No.DE.15(114)/PSB/2021/2165-2174 dated 01.07.2021:

(i) *"to collect annual school fee (only all permitted heads of fees) from their students as fixed under the DSEAR, 1973 for the academic year 2020-21, but by providing deduction of 15% on that amount in lieu of* ***unutilized facilities*** *by the students during the relevant period of academic year 2020-21".* And if the school has collected the fee in excess to the direction issued by the Hon'ble Court, the same shall be refunded to the parents or adjusted in the subsequent month of fee or refund to the parents.

(ii) The amount so payable by the concerned students be paid in six equal monthly instalments w.e.f. 10.06.2021.

(iii) The above arrangement will also be applicable with respect to collection of fees for academic session 2021-22.

From review of the audited financial statements for FY 2021-22 and based on the further information provided by the school, it has been noted that the school has reported 85% of the annual charges and development charges its audited financial statements of FY 2021-22. Therefore, the income collected by the school during the FY 2021-22 with respect to annual charges and development fee has been grossed up in order after deducting the income of FY 2020-21 to make comparative income with the FY 2022-23. The detailed calculation has been provided below.

Particulars	Income as per AFS of FY 2021-22	Income Considered in the Above Table	Remarks
Tuition Fee	6,68,94,441	6,68,94,441	
Annual Charges	69,41,274	81,66,205	The school recorded 85% of these income as per DoE order. Therefore, it has been grossed up in order to determine the normal income of the school.
Development fund	60,47,355	71,14,535	

Similarly, arrears amounting to INR 1,08,73,333 for annual charges and development fee for academic session 2020-21 collected in academic session 2021-22 has not been considered while evaluating fund position of the school.

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 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:

- 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 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 has not been considered while deriving the fund position of the School.

Note 4: All budgeted expenditure of the school has been considered while deriving the fund position of the school except the following:

Particulars	Expenditure as per Budgeted of FY 2022-23	Disallowed	Remarks
Salary Arrears	5,00,00,000	5,00,00,000	Considered separately
Transportation Expenses – Driver Salary	95,40,000	95,40,000	Neither expense nor income with respect to transportation has been considered
Transportation expenses – Running & Maintenance	27,40,000	27,40,000	
Transportation expenses – Interest on loan	7,90,000	7,90,000	

Note 5: While evaluating the fee hike proposal, department considers that how much liquid funds would require the school for a particular session 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 DESAR, 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.

Note 6: Salary arrears of INR 2,30,35,282 for FY 2020-21 and 2021-22 as submitted by the school has been considered while deriving the fund position.

ii. In view of the above examination, it is evident that the school does not have adequate funds for meeting all the operational expenditures for the FY 2022-23. In this regard, the directions issued by the Directorate of Education vide circular no. 1978 dated 16.04.2010 states that,

"All Schools must, first of all, explore and exhaust the possibility of utilising the existing funds/ reserves to meet any shortfall in payment of salary and allowances, as a consequence of increase in the salary and allowance of the employees. A part of the reserve fund which has not been utilised for years together may also be used to meet the shortfall before proposing a fee increase."

AND WHEREAS, in the light of above evaluation which is based on the provisions of DSEA, 1973,DSER, 1973, guidelines, orders and circulars issued from time to time by this Directorate, it was recommended by the team of Chartered Accountants along with certain financial suggestions that were identified (appropriate financial impact has been taken on the fund position of the school) and certain procedural suggestions which were also noted (appropriate instructions against which have been given in this order), that the sufficient funds are not available with the School to carry out its operations for the academic session 2022-23. Accordingly, the fee increase proposal of the school may be accepted.

AND WHEREAS, it is noticed that the school has incurred INR 7,98,51,655 towards building construction, repayment of vehicle loans and interest thereon incurred in contravention to the provisions of DSEAR, 1973 and other orders issued by the departments from time to time. Therefore, the school is directed to recover the aforesaid amount from society/ management. 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 DSEAR, 1973 without providing any further opportunity of being heard.

AND WHEREAS, considering the financial situation and existing deficiencies and keeping in view that salary and other employee's benefits can be paid to the teachers and staff smoothly, the fee hike is allowed to the school with the suggestions for improvement. The school is hereby further directed that the additional income received on account of increase fee should be utilized at first instance only for payment of salary and salary arrears and submit the compliance report within 30 days from the date of issue of this order.

AND WHEREAS, it is relevant to mention charging of any arrears on account of fee for several months from the parents is not advisable, not only because of the additional sudden burden fall upon the parents/students but also as per the past experience, the benefit of such collected arrears is not passed to the teachers and staff in most of the cases as was observed by the Justice Anil Dev Singh Committee (JADSC) during the implementation of the 6th CPC. 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 5% to be effective from 01 October 2022.

AND WHEREAS, recommendation of the team of Chartered Accountants along with relevant materials were put before the Director of 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 not available with the school for meeting financial implication for the academic session 2022-23.

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)

Accordingly, it is hereby conveyed that the proposal for fee hike of **Maxfort School (School ID - 1411253), Parwana Road, Pitampura, New Delhi - 110034** filled by the school in response to the Order No. F.DE.-15(40)/PSB/2019/4440-4412 dated 08.06.2022 for the academic session 2022-23, is accepted by the Director (Education) with the above conclusion and suggestions and the school is hereby allowed to increase the fee by 5% to be effective from 1 October, 2022

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

1. To increase the fee only by the prescribed percentage from the specified date.
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 is issued with the prior approval of the Competent Authority.

Nandini

(Nandini Maharaj)
Additional Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi

To
The Manager/ HoS
Maxfort School
(School ID - 1411253),
Parwana Road, Pitampura,
New Delhi - 110034

No. F.DE.15 (1184)/PSB/2023 / 1107- 1112

Dated: 02/02/23

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) ensure the compliance of the above order by the school management.
4. DE's nominee concerned
5. In-charge (I.T Cell) with the request to upload on the website of this Directorate.
6. Guard file.

(Nandini Maharaj)
Additional Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi