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

No. F.DE.15 (1126)/PSB/2022/ 493-497 **Dated: 16/01/23**

Order

WHEREAS, **Himalaya Public Senior Secondary School (School ID- 1413207), D-12, Sector-7, Rohini, Delhi-110085** (hereinafter referred to as " **the School**"), run by the Tandon 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, the manager of every recognized school is required to file a full statement of fees every year for the ensuing academic session under section 17(3) of the DSEAR, 1973 with the Directorate. Such a statement is required to indicate the estimated income of the school to be derived from fees, estimated current operational expenses towards salaries and allowances payable to employees etc. in terms of rule 177 (1) of the DSEAR, 1973.

AND WHEREAS, as per section 18(5) of the DSEAR, 1973 read with sections 17(3), 24 (1) and Rule 180 (3) of the above DSEAR, 1973, responsibility has been conferred upon 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 recognized 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 recognized 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 authorized by the Director in this behalf and also by officers authorized 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, 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 fees and other charges, with the objective of preventing profiteering and commercialization of education.

AND WHEREAS, it was also directed by the Hon'ble Supreme Court, that the DoE in the aforesaid matter titled Modern School Vs. Union of India and Others in paras 27 and 28 that in the case of private unaided schools situated on the land allotted by DDA/other land-owning agencies at concessional rates:

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

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

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

AND WHEREAS, the Hon'ble High Court of Delhi vide its judgement dated 19.01.2016 in writ petition No. 4109/2013 in the matter of Justice for All versus Govt. of NCT of Delhi and Others, has reiterated the aforesaid directions of the Hon'ble Supreme Court and has directed the DoE to ensure compliance of terms, if any, in the letter of allotment regarding the increase of the fee by recognized unaided schools to whom land has been allotted by DDA/ other land-owning 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 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.

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 and the school was also provided an opportunity of being heard on 23.08.2022 to present its justifications/clarifications on the fee increase proposal. Based on the discussion with the school during personal hearing, the school was further asked to submit necessary documents and clarification on various issues noted. In the aforesaid personal hearing, compliance of Order No. F.DE-15(215)/PSB/2021/3651-3656 dated 17.09.2021 issued for academic session 2019-20 were also discussed with the school and school's submissions were taken on record.

AND WHEREAS, on receipt of clarification as well as documents uploaded on the web portal for fee increase, and subsequent documents submitted by the school as a result of the personal hearing on 31.08.2022, were 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 24 of DoE Order dated 11.02.2009 states "*Every recognized unaided school covered by the Act, shall maintain accounts on the principles applicable to a non-business organization/ not-for-profit organization as per Generally Accepted Accounting Principles (GAAP). Such schools shall prepare their financial statement consisting of a Balance Sheet, P&L Account and Receipt & Payment account every year.*"

   Further, Appendix-III (Part-I-General instructions and accounting principles) of Guidance Note-21 states:

   1. *"the financial statement of the Schools should be prepared on accrual basis.*
   2. *a statement of all significant accounting policies adopted in the preparation and presentation of the balance sheet and income and expenditure account should be included in the School's Balance sheet……………*
   3. *accounting policies should be applied consistently from one financial year to the next. Any change in the accounting policies which has a material effect in the current period, or which is reasonably expected to have a material effect in later periods should be disclosed….".*

   Further, Clause 24 of DoE Order dated 11.02.2009 states "*Every recognized unaided school covered by the Act, shall maintain accounts on the principles applicable to a non-business organization/ not-for-profit organization as per Generally Accepted Accounting Principles (GAAP).*

   On review of the audited financial statements and other records submitted by the School, it has been noted that the school has been recording income on receipts basis. Thus, the school is deviating from basic principle in preparation of books of account and presenting the audited financial statements. The school also confirmed that it has been recording expenditure on accrual basis. The school is doing this intentionally in order to report higher operation loss in the audited financial statements than the actual. Therefore, the school has been preparing its audited financial statements neither on accrual basis nor cash basis. Even the statutory auditor of the school has not mentioned this fact in their Independent Auditors Report.

   Therefore, the school is hereby directed, to maintain its books of account in accordance with GAAP from subsequent financial years and made necessary adjustment in its books of accounts accordingly. The compliance with this direction shall be verified while evaluating the fee increase proposal of the subsequent year. However, the audited financial statements submitted by the school for FY 2019-20, FY 2020-21 and FY 2021-22 has been considered in the evaluation of fee increase proposal.

2. Section 18(5) of the DSEA, 1973 states *"the managing committee of every recognized private school shall file every year with the Director such duly audited financial and other returns as may be prescribed, and every such returns shall be audited by such authority as may be prescribed"*. Further, Rule 180 (1) of DSER, 1973 states *"every recognized private school shall submit returns and documents in accordance with Appendix-II"*.

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

Accordingly, the DoE vide Order No. F.DE-15/ACT-I/WPC-4109/Part/13/7905-7913 dated 16.04.2016, specified the format of returns and documents submitted to be submitted by the private unaided recognized schools. As per this order the format of the financial statements shall 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 by ICAI.

Based on the abovementioned provisions, every private unaided recognized school is required to get its accounts audited by the Chartered Accountant before submission of return under Rule 180(1) of DSER, 1973. The documents submitted by the school were taken on record. Review of the audited financial statements and Independent Auditors Report for FY 2019-20 and 2020-21 the following was noted:

a. The audit report has been issued in Form 10B under the Income Tax Act, 1961 which is not in conformity of the above-mentioned provisions.

b. In the audit report the auditor has not given reference to "Receipt & Payment Account." However, the same has been attested by the auditors.

In view of the above, the school is hereby directed to get its accounts audited in accordance with above mentioned provisions and resolve all queries raised by the statutory auditor before completion of the audit. The compliance with this direction will be examined while evaluating the fee hike proposal of the subsequent year. However, for the purposes of evaluation of fee hike proposal for academic session 2022-23, balance sheet and income and expenditure submitted by the school has been considered.

3. 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."*

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 fifty, 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.

The record submitted by the School were taken on record, it has been noted that the School has got the actuarial valuation for its retirement benefits. The school has created a provision for gratuity of INR 2,20,62,573 as on 31.03.2022 in accordance with the actuarial valuation report for FY 2021-22. However, the school didn't invest any amount in plan assets within the meaning of AS-15 to secure its retirement benefit obligations. The same was discussed with the school during personal hearing, the school accept the fact and assure the department to invest in plan assets as per directions of DoE in its previous fee hike order.

Accordingly, the school has invested INR 1,20,00,000 with gratuity plan of LIC as on 09.09.2022 which qualifies as investment in "Plan Assets" as per AS-15 issued by ICAI and submit the proof of investment. Therefore, INR 1,20,00,000 invested by the school has been considered while deriving the fund position of the School.

Further, the school is hereby directed to invest the remaining amount in plan assets within the meaning of AS-15. The compliance of the same will be reviewed at the time of subsequent fee hike proposal submitted by the school.

Furthermore, the amount of INR 17,58,000 proposed by the school for gratuity has not been considered as eligible expenditure as amount already invested by the school during FY 2022-23 has been considered while deriving the fund position.

4. Direction no. 2 included in the 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 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 10.02.2005 issued by this Directorate states "*Capital expenditure cannot constitute a component of the financial fee structure.*"

Clause 7.24 of Duggal committee report states "*school should be prohibited from discharging any of the functions, which rightly fall in the domain of the society out of the fees and other charges collected from the students; or where the parents are made to bear, even in part, the financial burden for the creation of facilities including building, on a land which had been given to the society at concessional rates for carrying out a philanthropic activity. One only wonders what is then the contribution of the society that professes to run the school*".

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

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 lower cost compared to the price of commercial as well as the residential land in that nearby locality. The reason for allotment of land at such lower cost was that 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 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, 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 such 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.

The Directorate in its Order No. F.DE-15(215)/PSB/2021/3651-3656 dated 17.09.2021 issued for academic session 2019-20, noted that the school had incurred INR 51,79,810 i.e., (INR 84,300 FY 2015-16, INR 5,99,505 in FY 2016-17 and INR 34,81,184 in FY 2017-18 and INR 10,14,821 in FY 2018-19) for addition/construction of school building without complying with the above-mentioned provisions. Given the fact that the school neither implement the recommendation of the 7th CPC nor invest an amount in plan asset to protect the statutory dues of the employee towards gratuity and leave encashment. Accordingly, the school was directed to recover this amount from the society which is still pending for recovery.

Further, on review of the audited financial statements of FY 2019-20, it has been noted that the school has continued to incur capital expenditure of INR 2,32,725 towards addition to the building without complying with the above-mentioned provisions.

Therefore, the total amount of INR 54,12,535 i.e., (INR 51,79,810 *plus* INR 2,32,725) utilised by the school for construction of school building has been again considered as fund available with the school while deriving the fund position with the direction to the school to recover this amount from the society within 30 days from the date of issue of this order. Non-compliance with the above direction shall be viewed seriously in accordance with the provisions of Section 24(4) of the DSEA, 1973 while evaluating the fee hike proposal for the subsequent academic session.

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

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

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

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

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

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

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

The Directorate in its order F.DE-15(215)/PSB/2021/3651-3656 dated 17.09.2021 issued for academic session 2019-20, noted that the school had transferred INR 1,56,00,000 i.e., (INR 78,00,000 each) during FY 2015-16 to FY 2018-19 to the Chairman and Vice Chairman of the school in form of remuneration to oversee the day-to-day function of the School. However, school neither implement the recommendation of 7th CPC nor paying salaries to the staff as per recommendation of 6th CPC fully. Further, the school also fails to understand that neither such post is available in the recruitment rules nor the school can transfer funds to the members of society in any manner. Therefore, the school was directed to recover such funds from the society which is still pending for recovery.

The School in its submission states that "*the school is committed for the recovery from the society and members of the management. As the amount is huge, it will be recovered in a phased manner*".

However, no recovery either from the society or from the members of management has been done by the school. Therefore, the amount of INR 1,56,00,000 paid by the school to the chairman and vice chairman as a remuneration without complying with above mentioned provisions has been considered as fund available with the school while deriving the fund position with the direction to the school to recover this amount from the society within 30 days from the date of issue of this order. Non-compliance with the above direction shall be viewed seriously in accordance with the provisions of Section 24(4) of the DSEA, 1973 while evaluating the fee hike proposal for the subsequent academic session.

6. The Hon'ble Supreme Court in the judgement of Modern School vs Union of India and others held that *capital expenditure cannot form part of financial fee structure of the school*. Further, in pursuance of Rule 177 of DSER, 1973, income derived by an unaided 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.

Moreover, 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 award of scholarships to students, establishment of any other recognised school, or assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run. And the aforesaid savings shall be arrived at after providing for the following, namely:*

e) Pension, gratuity and other specified retirement and other benefits admissible to the employees of the school.
f) The needed expansion of the school or any expenditure of a developmental nature.
g) The expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation.
h) Co-curricular activities of the students.
Reasonable reserve fund, not being less than ten percent, of such savings.

Further, with respect of earmarked levies, the school is required to ensure with the following provisions.

- Clause 22 of the Order dated 11.02.2009 which states that earmarked levies shall be charged from user students on 'no profit no loss' basis.

- Rule 176 of DSER, 1973 states that 'income derived from collections for specific purpose shall be spent only for such purpose'.

- Judgement of Hon'ble Supreme Court of India in the case of Modern School Vs Union of India & Others states that schools, being run as non-profit organizations, are supposed to follow fund-based accounting.

And, as per Clause 22 of order dated 11.02.2009, Earmarked levies shall be charged from the user students only. Earmarked levies for the services rendered shall be charged in respect of facilities involving expenditure beyond the expenditure on earmarked levies already being charged for the purpose. They will be calculated and collected on 'no profit no loss basis and spent only for the purpose for which they are being charged. All transactions relating to the earmarked levies shall be an integral part of the school accounts.

The Directorate in its Order F.DE-15(215)/PSB/2021/3651-3656 dated 17.09.2021 issued for academic session 2019-20, noted that the school had incurred capital expenditure of INR 41,27,200 during FY 2016-17 towards purchase of two buses without complying with above mentioned provisions. Given the fact that school neither implemented recommendation of 7th CPC nor invest in plan asset within the meaning of AS-15 to secure its retirement benefits obligation. In addition to that, the school has not followed fund-based accounting and transferred the burden of capital expenditure of earmarked levy to all the students of the school which is not allowed as per above mentioned provisions. Accordingly, the school was directed to recover this amount from the society which is still pending for recovery.

Therefore, the amount of INR 41,27,200 utilised by the school for purchase of buses without complying with above mentioned provisions has been considered as fund available with the school while deriving the fund position with the direction to the school to recover this amount from the society within 30 days from the date of issue of this order. Non-compliance with the above direction shall be viewed seriously in accordance with the provisions of Section 24(4) of the DSEA, 1973 while evaluating the fee hike proposal for the subsequent academic session.

7. On review of the audited financial statement from FY 2020-21 to FY 2021-22, it has been noted that the School were made payments to outsourced employees hired for housekeeping and security services. During personal hearing the school mentioned that these payments were made on companionate basis to help workers working on minimum wages in order to maintain their livelihood. To this extent the intention of the school was right. However, the School has also paid service charges to the vendor @10% during this period which violates the proprietary principle while utilizing school fund appropriately by the School management.

   Therefore, services charges paid by the School of INR 9,07,623 i.e., (10*(INR 81,35,854 + INR 18,48,000)/110) has been considered as fund available with the School while deriving the fund position with the direction to the School to recover this amount from the school management /vendor within 30 days from the date of issue of this order..

8. Post personal hearing, the school submitted salary arrears of INR 11,46,13,933 pending for payment from January 2016 to March 2022. The School was asked to provide the soft file of calculation of 7th CPC arrear and the school submitted the same vide its email dated 10.09.2022. While reviewing the calculation submitted by the school. following major observations have been noted:
   a. The School claims salary arrears which include 49 employees those already left the school with their full and final settlement. Further, out of 49 employees, 33 employees were not even completed their probation period with the school.
   b. The school didn't implement the recommendation of 6th CPC completely and smartly, claims its arrears of 6th CPC while calculating the arrears of 7th CPC.

c. The School also claims salary arrears of Part-time employees. Illustrative list of employees is given below:

1) Mr. Promod Kumar Sharma
2) Ms. Ramsati
3) Mr. Amal Mondal

d. The School also claims the salary arrears of employees before their date of joining. Illustrative list of employees is given below:

Name of Employees	Joining date	7th CPC arrears claimed from
Ms. Kirty Thukral	10.06.2021	Oct-18
Ms. Tarandeep kaur	10.06.2021	Nov-20
Ms. Kirti Sharma	10.06.2021	Apr-21
Ms. Tara Rautela	01.01.2018	Apr-19
Ms. Neha Mittal	10.06.2021	Apr-21
Ms. Priyanka Nagdev	22.11.2021	Aug-18

Based on the aforesaid findings, which are material and pervasive in nature, 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 provide justification on the same vide email dated 08.12.2022 to provide justification on all the issues mentioned above. However, no response from the school was received.

In view of the above- mentioned findings, the figures of salary arrears submitted by the school is not reliable at all. Therefore, no amount of salary arrears has been considered while deriving the fund position of the School.

B. Other Suggestion for Improvements

1. As per Clause 19 of Order No. F.DE/15(56)/Act/2009/778 dated 11.02.2009 "*The tuition fee shall be so determined as to cover the standard cost of establishment including provisions for DA, bonus, etc., and all terminal, benefits as also the expenditure of revenue nature concerning the curricular activities.*"

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

   And as per clause 22 of Order No. F.DE. /15(56)/ Act/2009/778 dated 11.02.2009 "*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.*"

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

   Further, sub-rule 3 of Rule 177 of DSER, 1973 provides "*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).*" And, 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.*"

However, as per audited financial statements of FY 2019-20, FY 2020-21 and FY 2021-22, it has been noted that the school charges earmarked levies in the form of Physical educational fees, SMS charges, Transportation fees, Home Science fees, Hindustani Vocal Music, Activity fees, Abacus fees, Science fees, computer fees, etc. However, the school has not maintained separate fund accounts for these earmarked levies and has been generating surplus from earmarked levies, which has been utilised for meeting other expenses of the school or has been incurring losses (deficit) which has been met from other fees/income.

The aforementioned Guidance Note also 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). However, the school has not been following fund-based accounting in accordance with the principles laid down by the aforesaid Guidance Note.

Based on the above provisions, the school is required to maintain a separate fund account depicting clearly the amount collected, amount utilised and balance amount for each earmarked levy collected from students. Unintentional surplus, if any, generated from earmarked levies has to be utilized or adjusted against earmarked fees collected from the users in the subsequent year. Further, the school should evaluate costs incurred against each earmarked levy and propose the revised fee structure for earmarked levies during subsequent proposal for enhancement of fees, ensuring that the proposed levies are calculated on a no-profit no-loss basis and not to include fees collected from all students as earmarked levies. Accordingly, the school is directed to comply with the above-mentioned provisions.

2. 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.*"

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.

From review of presentation of the audited financial statements of FY 2021-22, it has been noted that the school upon purchase of assets out of the development funds, transfers an amount equivalent to the cost of the assets to General Funds instead of transferring to deferred income which may be written off in proportion of deprecation charged on the assets. As the school has not been following correct accounting treatment with respect development fund utilization resulting incorrect reporting of General Reserve. Accordingly, the operation loss of INR 6.35 crores up to FY 2021-22 reported by the school in the audited financial statements is not correct and misleading to the reader of financial statements due to involvement of notional amount.

3. On review of the audited financial statement, it has been noted that the school has not prepared Fixed Asset Register (FAR). The fixed asset register normally includes basic details such as asset description, date, supplier name, invoice number, manufacturer's serial number, location, purchase cost, other costs incurred, depreciation, asset identification number, etc. to facilitate identification of assets and documenting complete details of assets at one place.

   Therefore, the school is directed to prepare and submit the fixed assets register at the earliest. The same shall be verified at the time of evaluation of the fee proposal of the school for the next academic session.

4. As per clause 3 of the public notice dated 04.05.1997 published in the Times of India states "*No security/ deposit/ caution money be taken from the students at the time of admission and if at all it is considered necessary, it should be taken once and at the nominal rate of INR 500 per student in any case, and it should be returned to the students at the time of leaving the School along with the interest at the bank rate.*"

   Further, Clause 18 of Order no F.DE/15(56)/Act/2009/778 dated 11.02.2009 states "*No caution money/security deposit of more than five hundred rupees per student shall be charged. The caution money, thus collected shall be kept deposited in a scheduled bank in the name of the concerned School and shall be returned to the student at the time of his/her leaving the School along with the bank interest thereon irrespective of whether or not he/she requests for refund.*"

   However, on review of audited financial statement for the FY 2020-21 and 2021-22, it has been noted that the school is refunding only the principal amount to the student at the time of leaving the school, which is not in accordance with clause 18 of Order No. F.DE/15 (56) /Act /2009 / 778 dated 11.02.2009. The balance of caution money as on 31/03/2022 is INR 12,75,500 as per audited financial statements for the FY 2021-22. Accordingly, the School is again directed to comply with clause 18 of Order no F.DE/15(56)/Act/2009/778 dated 11.02.2009.

5. The School is not complying with the DoE Order No.F.DE.15/Act-I/08155/2013/5506-5518 dated 04.06.2012 as well as the conditions specified in the land allotment letter require to provide

25% reservation for children belonging to a EWS category. Therefore, the school is directed to ensure admission in accordance with the aforesaid order. From the records provided by the school, the percentage of EWS has been calculated below:

Particulars	FY 2022-23
Total Students	1,809
EWS Students*	285
% of EWS students	15.75%

**EWS includes non-fee paying students also.*

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 is INR **10,50,71,235** out of which the expected expenditures of the school would be INR **9,47,40,855** resulting in net surplus of INR **1,03,30,380** for the FY 2022-23. The detailed calculation is as under:

Particulars	Amount (INR)
Cash and Bank balances as on 31.03.2022 as per Audited Financial Statement of FY 2021-22	1,18,34,463
Investments as on 31.03.2022 as per Audited Financial Statement of FY 2021-22 **(Refer Note No. 1 Below)**	2,28,26,734
Liquid fund as on 31.03.2022	**3,46,61,197**
Add: Recovery from society towards construction of building **(Refer Financial Suggestion No. 4)**	54,12,535
Add: Recovery from society towards payment to members of managing committee **(Refer Financial Suggestion No. 5)**	1,56,00,000
Add: Recovery from society towards purchase of vehicle **(Refer Financial Suggestion No. 6)**	41,27,200
Add: Recovery from society/agency for excessive agency charges paid during FY 2020-21 and FY 2021-22 **(Refer Financial Suggestion No. 7)**	9,07,623
Add: Fees for FY 2021-22 as per Audited Financial Statements **(Refer Note No. 2 Below)**	6,88,63,110
Add: Other income for FY 2021-22 as per audited Financial Statements **(Refer Note No. 2 Below)**	63,42,201
Add: Additional income of annual charges and development fund **(Refer Note No. 2 Below)**	21,95,268
Total available funds for FY 2022-23	**13,81,09,134**
Less: FDR in joint name with DOE/CBSE and manager of the School **(Refer Note No. 1 Below)**	7,09,726
Less: FDR deposit with Hon'ble High Court **(Refer Note No. 1 Below)**	1,07,79,250
Less: Caution money as per Audited Financial Statements of FY 2021-22 **(Refer Other Suggestion No. 4)**	12,75,500
Less: Development Fund as per Audited Financial Statements of FY 31.03.2022	82,73,423
Less Depreciation reserve fund as on 31.03.2022 **(Refer Note No. 3 Below)**	-
Less: Investment made with LIC against provision made for retirement benefits **(Refer Financial Suggestion No. 3)**	1,20,00,000

Particulars	Amount (INR)
Estimated Available Funds for FY 2022-23	**10,50,71,235**
Less: Budgeted Expenditure as provided by the school **(Refer Note No. 4 and 5 Below)**	**9,47,40,855**
Less: Salary Arrears **(Refer Financial Suggestion No. 8)**	-
Estimated Surplus	**1,03,30,380**

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

Particulars	As per AFS of FY 2021-22	Remarks
FDR in joint name of the Manager and DoE	7,09,726	Deducted as not available for utilization.
FDR deposit with High Court	1,07,79,250	
FDR against Development Fund/General Fund	1,13,37,758	Considered as fund available with the School.
Total	2,28,26,734	

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 had 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 land-owning agencies and not to increase any fee in FY 2020-21 till further direction.

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 commercialization, again directed to the management of all the petitioners private unaided recognized 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 of 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 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	4,68,00,026	4,68,00,026	
Annual Charges	53,74,383	63,02,052	The school recorded 85% of the income. Therefore, this has been grossed up.
Development fund	70,83,109	83,33,069	

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 charges 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 already 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 as reported by the school in its audited financial statements for the FY 2021-22 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:

Head of Expenditure	FY 2021-22	FY 2022-23	Amount Disallowed (INR)	Remarks
Salaries and wages of the teaching and non-teaching staff	4,74,64,591	8,37,81,548	2,68,24,039	Excessive amount proposed by the School without any proper justification. Therefore, this expense has been restricted to 120% of previous year expense.
Gratuity	41,18,557	17,58,000	17,58,000	Refer Financial Suggestion No. 3
Festival and Function expense	3,08,805	25,00,000	19,21,610	Excessive expense proposed by the school. Therefore, restricted to 110% of expense incurred in FY 2019-20.
Earmarked Levy (Transportation and abacus, Health checkup, home science, IT fees, Stem fees)		2,21,62,376	2,21,62,376	Neither income nor expense of earmarked levies have been considered.

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.

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
Himalaya Public Senior Secondary School
(School ID- 1413207),
D-12, Sector-7, Rohini, Delhi-110085

No. F.DE.15 (1126)/PSB/2022 / 493-497

Dated: 16/01/23

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. In-charge (I.T Cell) with the request to upload on the website of this Directorate.
5. Guard file.

Nandini

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

Thus, current assets, loans and advances and current liabilities will always reflect in the financial statements at the end of the financial year.

ii. In view of the above examination, it is evident that the school does has 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 April 2010 states that:

"All schools must, first of all, explore and exhaust the possibility of utilizing 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 utilized 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 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 rejected.

AND WHEREAS, it is noticed that the school has incurred INR 2,60,47,358 in contravention of Rule 177 and other 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, 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 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 **Himalaya Public Senior Secondary School (School ID- 1413207), D-12, Sector-7, Rohini, Delhi-110085** 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 rejected by the Director (Education) with the above conclusion and suggestions.

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

1. Not to increase any fee/charges during FY 2022-23. In case, the School has already charged increased fee during FY 2022-23, 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.