

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

No. F.DE.15 (1)09/PSB/2022/ 415-420

Dated: 16/01/23

Order

WHEREAS, **Modern Convent School (School ID - 1821190), Sector-IV, Dwarka, New Delhi - 110075** (hereinafter referred to as "**the School**"), run by the Modern Charitable Foundation (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 06.09.2022. The school was also provided an opportunity to be heard on 27.09.2022 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/ (434)/PSB/2022/2062-2066 dated 21.04.2022 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."*

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. Further, 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.*

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 then is the contribution of the society that professes to run the school"*.

As per Clause 14 of Order No. F.DE. /15(56)/Act/2009/778 dated 11.02.2009 and Clause 7 of Order No. DE 15/Act/Duggal.com/203/99/23033-23980 dated 15.12.1999 stated *"Development fee, not exceeding 15% of the total annual tuition fee may be charged for supplementing the resources for purchase, up gradation and replacement of furniture, fixtures and equipment."*



Development fee, if required to be charged, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head along with income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account."

The DOE vide Order No. 15/ (434)/PSB/2022/2062-2066 dated 21.04.2022 issued to the school post evaluation of fees hike proposal for academic session FY 2019-20, noted that school had incurred INR 5,46,54,829 from FY 2013-14 to 2016-17 for construction of school building.

It was also noted that the school incurred additional capital expenditure on construction of school building for INR 2,12,78,615 and INR 54,68, 674 in the FY 2017-18 and 2018-19. The school incurred the aforesaid expenditure without complying with the requirement of Rule 177 of DSER, 1973. Accordingly, the school was directed to recover INR 8,14,02,118 (INR 5,46,54,829 plus INR 2,12,78,615 plus INR 54,68, 674) from society which is still pending for recovery.

The representation submitted by the school against Order No. 15/(434)/PSB/2022/2062-2066 dated 21.04.2022 issued to the school post evaluation of fee hike proposal for FY 2019-20 were taken on record. The school submitted that *"the expenditure incurred on building (capitalized as building earlier) have now being regrouped as fixtures, being of such a nature"*.

On review of the representation submitted by the school, it appears that the school does not understand the requirement of Rule 177 of DSER, 1973. Rule 177 (1) of DSER, 1973 clearly states that *"Income derived by an unaided utilized school by way of fees shall be utilized in the first instance, for meeting the pay, allowances, and other benefits admissible to the employees of the school."* Thus, the school can incur the capital expenditure if there is saving deriving in the manner specified under Rule 177 of DSER, 1973. However, from the record submitted by the school, it was noted that the school is yet to implement the recommendation of 7th CPC and has to invest an amount in plan assets towards payment of gratuity and leave encashment. The school instead of implementing the recommendation of 7th CPC and investment of an amount in plan asset for payment of statutory dues payable to the employee opted to incur capital expenditure on construction of school building and when it was caught by the department. The school in order to escape itself from the recovery, has changed its instance by mentioning that the above expenditure was related to the fixture and not for the construction of the school building. This clearly indicates that the school, first of all want to exhaust its funds on the construction activities instead of paying salary to the teachers and then submit a fee hike proposal to DoE on the ground that it does not have sufficient funds to pay salary to its teachers which is nothing, but a kind of measure taken by the school to get the fee hike from the department at any cost.

It was also noted that apart from the above expenditure, the school incurred INR 40,09,103 in FY 2019-20, INR 1,07,20,535 in FY 2020-21 and INR 28,31,471 in FY 2021-22 towards staircase, solar panel, toilet block and finishing and furnishing thereof which is also part of the school building. However, this time the school has capitalized these expenditures under different heads just to escape itself that it was not related to building and therefore, nothing is recoverable from the society. However, the other facts are remained same that all these expenditures incurred by the school without complying with the provisions of Rule 177 of the DSER, 1973.



Accordingly, the total expenditure incurred by the school amounting to INR 9,89,63,227 related to construction of the school building is recoverable from the society and therefore, it has been included while deriving the fund position of the school with the direction to the school to recover the same from society within 30 days from the date of issue of this order. Non-compliance with this direction by the school necessary action against the school shall be taken in accordance with section 24 of the DSEA, 1973.

Further, the budgeted expenditure for "furnishing & finishing" proposed by the school for FY 2022-23 amounting to INR 50,00,000 has not been considered as eligible expenditure while deriving the fund position.

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.*"

As per 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 vide Order No. 15/ (434)/PSB/2022/2062-2066 dated 21.04.2022 issued to the school post evaluation of fees hike proposal for academic session FY 2019-20, noted that school had purchased a car and two buses out the school funds and by taking a loan from the banks. Accordingly, the school was directed to recover INR 50,78,921 from the society to the extent of school funds used by the school for repayment of loan and payment of interest thereon till the FY 2017-18.

But the school instead of recovering the aforesaid amount from the society, incurred additional expenditure for purchase of two more buses by taking fresh loan and five buses from the school funds in FY 2017-18 and three buses in FY 2018-19. In order to purchase these buses, the school had paid INR 1,01,12,568 out the school funds towards down payment.

The school further paid INR 54,31,115 towards principal repayment and INR 1,82,518 towards interest thereon during the FY 2017-18 & 2018-19. Accordingly, the school was directed to recover INR 2,08,05,122 (*INR 50,78,921 plus INR 1,01,12,568 plus INR 54,31,115 plus INR 1,82,518*) from the society which is still pending for recovery.

The school instead of complying with the previous direction of the department, purchased two new buses by taking the loans from Axis Bank and two buses from the school funds. The school paid total amount of INR 30,14,314 for purchase of the above buses. It has also been noted that the school has used the school funds of INR 82,01,923 towards repayment of aforesaid loans and interest costs thereon from FY 2019-20 to FY 2021-22.

The submitted its representation against the fee hike order of FY 2019-20. The school submitted that "*the capital expenditure on vehicle loan repayments have been funded out of the transport fees collected and incurred the capital expenditure as per the legal framework of rule 177 of DSER, 1973.*"

The representation submitted by the school cannot be relied upon given the facts that the transportation facility is supported by earmarked levies, it must be run on a no-profit, no-loss basis. Further, as per Rule 177 of DSER, 1973, the school funds should be utilized for payment of the salary and salary related cost at first instances and if there is any saving the same can be utilized for meeting capital and other contingent expenditure of the school. Therefore, the school cannot shift the financial burden of purchase of buses on other who is not availing such facility.

It is also important to mention here that the school has not implemented the recommendation of 7th CPC until now. The school instead of implementing the recommendation of 7th CPC opted to incurred capital expenditure such as construction of school building and purchase of the bus etc. with clear intention to exhaust school funds first and then submit the fee hike proposal by claiming that the school does not have sufficient funds to pay salary to its staff in accordance with the recommendation of 7th CPC. Therefore, the total capital expenditure of INR 3,17,80,680 incurred by the school for purchase of buses out the school is hereby recoverable from the society and accordingly, it 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.

3. 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."*

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"*.

Based on the above-mentioned provisions, upon utilization of development funds, the school needs to create the 'Development Fund Utilisation Account' (or by any other name), which may be treated as deferred income. And this deferred income should be written off in proportion to the depreciation charged to the revenue account. By following the aforesaid accounting treatment specified in para 99 of GN-21, the depreciation reserve fund would be mere an accounting head, and school need not the require creation of equivalent investments against the depreciation reserve.

The documents submitted by the school were taken on record, from review of the documents submitted by the school, it has been noted that the school has not been following para 99 of the GN-21 cited above. Because upon incurrence of the capital expenditure out of the development fund, the school has not created deferred income and has not transferred any amount from deferred



income to the credit of income and expenditure account. Thus, correct accounting entry is not being followed by the school.

Therefore, the development fund balance to the extent of amount kept in the form of FDR/ Bank has been considered while deriving the fund position of the school. With the direction to the school to follow correct accounting with respect to collection and utilisation of development fund/ fee.

4. 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 of FY 2021-22 revealed that the school has recorded a liability for retirement benefits of INR 9,54,92,297 in accordance with the actuarial report obtained by the school from the actuary and invested INR 32,35,975 with LIC against that. Since, investment with LIC qualifies as plan asset with the meaning of AS-15. Therefore, the amount deposited by the school in plan assets has been considered while deriving the fund position of the school with the direction to the school to invest the remaining amount in the plan assets.

B. Other Suggestion for Improvements

1. 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 other documents required to be submitted by the private unaided recognized schools. The aforesaid order also specifies 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 abovementioned 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, and a review of the audited financial statements and Independent Auditors Report of FY 2021-22 revealed that:

- a. The Independent Auditors Report was not issued in the format specified in Standard on Auditing-700 (SA 700) issued by the Institute of Chartered Accountants of India. Because the majority of the content of the Independent Auditors' Report was missing, such as the auditors' and management's responsibilities.
- b. In the audit report, the auditor has mentioned 'profit and loss account' whereas the school is required to prepare 'income and expenditure account' being not for profit organization.
- c. In the audit report, no reference with respect to 'Receipt & Payment Account' is mentioned, raising the doubt as to whether this has been audited or not. Although the same was duly signed by the auditor and management of the school.

In view of the above, the school is hereby directed to get its accounts audited by chartered accountant and get the independent auditors report in the format specified under SA-700 issued by ICAI. However, the audited financial statement submitted by the school has been considered for evaluation of fee hike proposal.

2. 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 fee that a recognised private unaided school can collect from the students/parents:

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

Based on the provisions mentioned above, charging of 'science fees, computer fees,' 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 science fees, computer 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.

3. 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.

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

- The total funds available for the FY 2022-23 amount to **INR 27,49,80,891** out of which cash outflow for the FY 2022-23 is estimated to be **INR 25,13,68,524**. This results in a surplus of **INR 2,36,12,367** 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	(40,49,879)
Investments as on 31.03.2022 as per Audited Financial Statement of FY 2021-22 (Refer Note No. 1 Below)	41,77,451
Liquid fund as on 31.03.2022	1,27,572
Add: Recovery from society towards construction of building (Refer Financial Suggestion No. 1)	9,89,63,227
Add: Recovery from society towards purchase of bus (Refer Financial Suggestion No. 2)	3,17,80,680
Add: Fees for FY 2021-22 as per Audited Financial Statements (Refer Note No. 2 Below)	16,30,24,010
Add: Other income for FY 2021-22 as per audited Financial Statements (Refer Note No. 2 Below)	17,42,277
Add: Additional income of annual charges and development fund (Refer Note No. 2 Below)	40,71,646
Less: Arrears of fee recorded in FY 2021-22 related to FY 2020-21. (Refer Note No. 2 Below)	2,14,51,473
Total available funds for FY 2022-23	27,82,57,939
Less: Student Security Deposit as per Audited Financial Statements of FY 2021-22	-
Less: Development Fund as per Audited Financial Statements of FY 31.03.2022 (Refer Financial Suggestion No. 3)	41,073
Less: Investment made with LIC against provision made for retirement benefits (Refer Financial Suggestion No. 4)	32,35,975
Less Depreciation reserve fund as on 31.03.2022 (Refer Note No. 3 Below)	-
Estimated Available Funds for FY 2022-23	27,49,80,891
Less: Budgeted Expenditure as provided by the school (Refer Note No. 4 and 5 Below)	19,89,15,561
Less: Salary Arrears (Refer Note 6 Below)	5,24,52,963
Estimated Surplus	2,36,12,367

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	LIC Investment	32,35,975	Considered separately.
2	Reserve Fund Investment	9,41,476	Part of the funds position as it is available with the school for utilization
	Total	41,77,451	

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 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. Also, arrears of FY 2020-21 have been recognized in 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	11,83,90,426	11,83,90,426	
Annual Charges	83,56,622	98,31,320	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	1,47,16,039	1,73,12,987	

Similarly, income of INR 2,14,51,473 recoded by the school related to previous FY 2020-21 in FY 2021-22 has been excluded while deriving the 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	Income as per AFS for FY 2021-22	Income as per Budgeted of FY 2022-23	Disallowed	Remarks
Salary Arrears	-	7,50,00,000	7,50,00,000	Considered separately
Salaries	7,12,01,949	13,02,27,110	4,47,84,771	It seems that the school proposed salary expenditure inclusive of salary arrears. As the salary arrears has been considered separately, the excess amount proposed by the school of INR 4,47,84,771 has not been considered.
Transportation expenses	63,75,319	3,68,00,000	3,68,00,000	Neither Income nor expenses related to transport has been considered in the above table.
Finishing & furnishing	-	50,00,000	50,00,000	(Refer Financial Suggestion No. 1)

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 7th CPC of INR 5,24,52,963 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 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 16.04.2010 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 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 13,07,43,907 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, 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 **Modern Convent School (School ID - 1821190), Sector-IV, Dwarka, New Delhi - 110075** 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.
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
Modern Convent School (School ID - 1821190),
Sector-IV, Dwarka, New Delhi - 110075
No. F.DE.15 (1109)/PSB/2022 / 415-420

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 (South 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

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