

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

No. F.DE.15 (1107) / PSB / 2022 / 405-409

Dated: 16/01/23

ORDER

WHEREAS, **Max Fort School, Sector-7, Dwarka, New Delhi- 110075 (School ID-1821225)** (hereinafter referred to as "**the School**"), run by the Samarjit Educational Welfare & Charitable 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 called from the school through email. The school was also provided an opportunity to be heard on 19.10.2022, to present its justifications/clarifications on the fee increase proposal. Based on the discussion, the school was asked to submit necessary documents and clarification on various issues noted and discussed during the aforesaid personal hearing. During personal discussion, compliance of Order No. F.DE.-15(638)/PSB/2018/30502-506 dated 14.12.2018 issued to the school post evaluation of the fee hike proposal for FY 2017-18 were also discussed and the school's submissions were taken on record.

AND WHEREAS, on receipt of further clarifications/ documents as well as the documents uploaded by the school on the web portal of the department, as a result of the personal hearing, were evaluated by the team of Chartered Accountants and key suggestions noted for improvement by the school are hereunder:

A. Financial Suggestions for Improvement:

1. Clause (vii) (c) of Order No. F.DE/15/Act/2K/243/KKK/ 883-1982 dated 10.02.2005 issued by this Directorate states "*Capital expenditure cannot constitute a component of the financial fee structure.*"

The Directorate's Order No. F.DE.-15(638)/PSB/2018/30502-506 dated 14.12.2018 issued to the school post evaluation of the proposal for enhancement of fee for FY 2017-2018 noted that, the school had purchased a luxury car in FY 2015-16 and 2016-17 amounting to INR 10,64,700 and INR 15,37,000 out of school fees collected from the students. It was also noted that the school had incurred the above expenditure without complying with the provisions of Rule 177 of the DSER, 1973. Therefore, the school was directed to recover INR 26,01,700 (i.e., INR 10,64,700 plus 15,37,000) from society which is still pending for recovery

While evaluating the fee increase proposal of FY 2022-23, the school explained that "*The aforesaid vehicles are used by school staff & students for day to day functioning, catering to emergency duties, medical or otherwise for students and staff, for transportation to various places for curriculum activities, visit to departments like DoE, CBSE, etc. Therefore, the expense incurred by the school is in accordance to Rule 177 of DSER, 1973.*" In view of the above, the claim of the school, that the above expenditure was incurred in compliance with Rule 177 of DSER, 1973 is incorrect. Given the fact that the school has not implemented the recommendation of the 7th CPC and has not invested an amount equivalent to the liability of gratuity and leave encashment in plan assets.

Accordingly, INR 26,01,700 (i.e., INR 10,64,700 plus 15,37,000) has been included while deriving the fund position of the school, with the direction to the school to recover this amount from society within 30 days from the date of issue of this order. Non-compliance with the above direction would be reviewed seriously, and appropriate action against the school under Section 24(4) of the DSEA, 1973 will be taken without giving any further opportunity.

2. As per clause 2 of Public Notice dated 04.05.1997, "*it is the responsibility of the Society who has established the school to raise such funds from their own sources or donations from the other associations because the immovable property of the school becomes the sole property of the Society*". Additionally, Clause (vii) (c)

of Order No. F.DE/15/Act/2K/243/KKK/ 883-1982 dated 10.02.2005 issued by DoE states that "*Capital expenditure cannot constitute a component of the financial fee structure.*"

Further, Rule 177 of DSER, 1973 states "*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*".

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.

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.*"

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 and residential land in nearby location. The reason for allotment of land at very low cost was the society came up with the offer to do noble work in the field of education and run the school in Delhi on charity and on a "no profit and no loss" basis. In its offer society also undertook to execute this work from its resources or by arranging funds through donations, subscriptions, or any other legal possible manner. Based on the noble grounds, the DoE had recommended to the land owning agencies for allotment of land to society which would otherwise not be possible for the society to have such a prime land at this cost in such posh location.

Accordingly, if the DoE finds any deviation or non-compliance in any condition of land allotment letter, the society as well as the school are bound to comply and honour that immediately as per the direction of



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

The DoE in its Order No. F.DE.-15(638)/PSB/2018/30502-506 dated 14.12.2018 issued to the school post evaluation of the fee hike proposal of FY 2017-18, noted that the school had utilized school funds/development fund of INR 5,00,03,684 and INR 93,37,812 for the construction of school building in FY 2015-16 and FY 2016-17. It was also noted that the above expenditure was incurred without complying with provision of Rule 177 of DSER, 1973. Accordingly, the school was directed to recover INR 5,93,41,496 from the society which is still pending for recovery.

While evaluating the fee increase proposal of FY 2022-23, the school explained that *"The school building was constructed in 2004-05 and with passage of time and continuous use, the building needs regular upgradation to make it safe and secure including unnatural eventuality for the students, staffs and functionaries of the school. Further, the expenditure was incurred on assembly area construction, expansion of classrooms, Labs, activity rooms, computer room, for students, expansion of basement, electrification, flooring of classes, corridors, stairs, etc. Also, school was in dire need of infrastructure as the students were getting promoted to senior classes and more sections and streams. To accommodate for these students, upgradation of infrastructure."*

During the personal hearing, the school further submitted that it should not be recovered from society because once the society has hand over the building to the school. The further expenditure relating to upkeep of the building should be borne by the school and not by the society. Based on representation submitted by the school, it seems that school does not understand with the requirement of Rule 177 of DSER, 1973. Because as per the Rule 177 (1), i.e., *"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."* Given the fact that the school has not implemented the recommendation of 7th CPC fully and has not invested an amount equivalent to the liability of gratuity and leave encashment in plan assets.

Further, on review of audited financial statements, noted that the school instead of recovering the aforesaid amount, has incurred additional expenditure of INR 59,83,049 and INR 9,85,334 on building finishing and fixtures in the FY 2019-20. It is pertinent to mention that in last three financial year the school has incurred INR 6,39,82,551 towards building repairs and whitewash (*year-wise details are tabulated below*) apart from the aforesaid capital expenditure.

Therefore, the capital expenditure incurred by the school for construction of school building including finishing and fixtures amounting to INR 6,63,09,879 (*INR 5,93,41,496 plus INR 59,83,049 plus INR 9,85,334*) has been included while deriving the fund position of the school with the direction to the school to recover this amount from society within 30 days from the date of issue of this order. Non-compliance with this directive would be taken seriously, and the department would take appropriate action

against the school under Section 24(4) of the DSEA, 1973 without giving any further opportunity to the school.

Particulars	FY 2019-20	FY 2020-21	FY 2021-22	Total (Amount In INR)
Building Repairs	98,58,417	1,61,96,777	1,98,61,094	4,59,16,288
Whitewash & Painting	62,22,955	15,93,447	1,02,49,861	1,80,66,263
Total	1,60,81,372	1,77,90,224	3,01,10,955	6,39,82,551

3. 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.*"

Directorate's Order No. F.DE.-15(638)/PSB/2018/30502-506 dated 14.12.2018 issued to the school post evaluation of fee hike proposal for the academic session 2018-19, noted that the school had paid INR 64,83,113 towards loan repayment of buses and INR 20,21,299 towards interest on bus loans during the FY 2014-15 to 2016-17. Accordingly, the school was directed to recover INR 85,04,412 (*INR 20,21,200 plus INR 64,83,113*).

In addition to the above, on review of the audited financial statements, it was noted that the school has utilized school funds of INR 14,84,002 towards repayment of loans and interest costs thereon during FY 2019-20 to FY 2021-22. The school incurred above expenditure without complying with the provisions of Rule 177 of the DSER, 1973.

It is also pertinent to mention here that school submitted in its representation that "*the school has to provide a good and safe transport facility to students studying in the school as it is basic need of parents and students. The school cannot run without its own transport system. In the current scenario the safe and secure transport service has to provide by school as per Supreme Court Guidelines. The repayments of loan and interest thereon shall be taken as per norms for welfare and safety of the students. However, in FY 2014-15 to 2016-17 the school had surplus of INR 32,43,520 which was used to repay interest and loan*"

Because the transportation facility is supported by earmarked levies, it must be run on a no-profit, no-loss basis. As a result, the school cannot shift the financial burden to other students who do not use the transportation services. Therefore, the principal amount and interest paid on the bus loans, being additional burdens should not be met out of school funds (fees collected from students). Further, the school is not following the fund based accounting for the transport income and expenditure, also no separate account has been opened by the school for collection of transportation fee. Therefore, contention of the school is incorrect that during the FY 2014-15 to 2016-17 the school had surplus from transport receipts, as the same must have been utilized for some other expenses.

Accordingly, the amount of INR 99,88,414 (*INR 20,21,200 plus INR 64,83,113 plus INR 14,84,002*) spent by the school on the repayment of bus loans is hereby added to the fund position of the school, considering the same as funds available with the school, with the direction to the school to recover this amount from

the society within 30 days from the date of this order. The school is further directed to ensure that transport vehicles are procured only from the transport fund and not from school funds unless savings are derived in accordance with Rule 177 of the DSER, 1973.

4. Section 2(m) defines that "*Manager*" in relation to a school, means the person, by whatever name called, who is entrusted, either on the date on which this Act comes into force or, as the case may be, under a scheme of management made under section 5, with the management of the affairs of that school"

Rule 59 of DSEAR, 1973 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 manager.

The Directorate in its Order No. F.DE.-15(638)/PSB/2018/30502-506 dated 14.12.2018 issued to the school post evaluation of the fee hike proposal of FY 2017-18, noted that the school had paid INR 40,54,500 (INR 12,30,000 plus INR 13,50,000 plus INR 14,74,500) in FY 2014-15 to 2016-17 to the director without providing any reason for which this payment was made to him. Therefore, the School was directed to recover INR 40,54,500 from society which is still pending for recovery.

While evaluating the fee increase proposal of FY 2022-23, the school explained that "*The school is Private unaided school and not a government or government aided school. Further, the director is not a relative to any functionary of the school/ society running the school. She has been working full time towards educational administration. She is responsible for Inception of school, Development of curriculum and processes and recruitment and admission, etc. Currently she is also taking care of responsibilities of Principal/ Manager i.e. safety and security of students, admission of EWS/ DG category students, CBSE activities, development and implementation of school academic and activity calendar. Accordingly, mere nomenclature of post should not be taken as a ground of disallowance.*"

Contention of the school is incorrect, as the director is assigned with the responsibilities of the manager of the school as per submission made by the school. Further, with the combined reading of the section 2(m) of DSEA, 1973 and Rule 59 of DSER, 1973 which clearly states that the designation of the manager is honorary in nature and no remuneration should be paid and allowed by the school to him/ her. Accordingly, the contention of the school is not tenable and justified

Therefore, the amount paid by school INR 40,54,500 is hereby added to the fund position of the school considering the same as funds available with the school with the direction to the school to recover this amount from the Society within 30 days from the date of this order. Further, the school is directed not to pay any remuneration/ honorarium/ allowance to the director.

5. 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."*

On review of audited financial statement for the FY 2019-20 to 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 13,49,000 as per audited financial statements for the FY 2021-22 against which balance available in the form of cash/ bank/ FDR are nil.

Further, the school was collecting *"Transport security and Technology security"* from the students before FY 2019-20 and reported the outstanding balance of INR 89,25,000 (*INR 38,25,000 transport security plus INR 51,00,000 technology security*) as on 31.03.2022. However, available cash/bank balance with the school is INR 41,69,187 indicating that the school has already utilized these funds for meeting other expenditure of the school without making the appropriate entries in the books of accounts. Therefore, closing balance of security balances has not been considered while deriving the fund position of the school with the direction to the school to rectify its books of accounts and submit the compliance report thereof.

6. 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, fixtures and equipment."* Thus, the development fee/funds should not be utilized for any other purposes other than those specified in Clause 14 of the Order dated 11.02.2009.



From a review of the audited financial statements of FY 2021-22, it has been noted that the school has reported development fund balance of INR 12,50,745 against which the school has a cash, bank balance including investment of INR 1,40,233 as on 31.03.2022.

During the personal hearing, the school explained that due to paucity of funds it has utilized some of the development funds for payment of operational expenses of the school but was not passed the correct accounting entries in the books of accounts due to which fund balance fund balance is not matching with cash, bank and investment.

Accordingly, the development fund balance to the extent of INR 1,40,233 has been considered while deriving the fund position of the school with the direction to the school to rectify its books and accounts by passing the necessary accounting entries in its books and accounts. The school is further directed to ensure the collection and utilization of development fee/ funds in accordance with above cited Clause 14 of the order dated 11.02.2009.

7. As per AS-15 on 'Employee Benefits' issued by the Institute of Chartered Accountants of India (ICAI) states that "*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:

- a) Assets held by a long-term employee benefit fund; and
- b) Qualifying insurance policies

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 recognized in the financial statements do not differ materially from the amounts that would be determined at the balance sheet date.*"

The documents submitted by the school were taken on record. From review of the documents submitted by the school revealed that the school has reported total liability of INR 1,94,44,114 towards gratuity in the audited financial statements whereas as per the actuarial valuation report total liability towards retirement benefits were INR 6,32,94,801 (INR 5,29,20,820 for gratuity and INR 1,03,73,981 for leave encashment). Thus, the school has reported short provision by INR 4,38,50,687 in the audited financial statements of FY 2021-22.

During personal hearing, the school explained that due to paucity of funds it could not invest the whole amount in plan assets. However, it could invest INR 35,00,000 with LIC by 31.03.2022 and submitted investment proof. Since, the investment with LIC qualifies as plan assets within the meaning of AS-15. Therefore, amount invested by the school in plan assets totaling to INR 35,00,000 has been considered while deriving the fund position of the school with the direction to the school to invest the remaining amount in plan assets within 30 days from the date of issue of this order.



D. Other Suggestions for Improvement:

1. Para 99 of Guidance Note on Accounting by Schools (2005) issued by the Institute of Chartered Accountants of India *"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."*

From review of the audited financial statement, 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 treating it as 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.

During personal hearing, school accepted this fact and agreed to rectify its accounting from the next financial year onward. The compliance with respect to this submission shall be verified while evaluating the fee increase proposal of the next academic session.

2. The Directorate in its Order No. F.DE-15/ACT-I/WPC-4109/Part/13/7905-7913 dated 16.04.2016 *"The Director hereby specify that the format of return and documents to be submitted by schools under rule 180 read with Appendix-II of the Delhi School Education Rules, 1973 shall be as per format specified by the Institute of Chartered Accountants of India, established under Chartered Accountants Act, 1949 (38 of 1949) in Guidance Note on Accounting by Schools (2005) or as amended from time to time by this Institute."*

Further, Para 58(i) of the Guidance Note states "A school should charge depreciation according to the written down value method at rates recommended in Appendix I to the Guidance Note."

From review of the financial statements for the FY 2021-22, it has been noted that the depreciation on fixed assets have been provided on written down value method at the rates prescribed in the Income Tax Rules, 1962 which is not in accordance with the provisions of the Guidance Notes issued by the Institute of Chartered Accountants of India. Therefore, the school is directed to apply the provisions outlined in the Guidance note mentioned above. This being the procedural finding no financial impact has been given while deriving the fund position of the school.

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

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

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

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

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

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

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

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

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

Further, The Directorate of Education, vide Order No. DE15/ Act/Duggal.com/203/99/23033-23980 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 'Ear marked, Pupil fund and Medical, Health and Hygiene charges' 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 Ear marked, Pupil fund and Medical, Health and Hygiene charges 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.

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

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

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

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

Based on the aforesaid provisions, every private unaided recognized school is required to get its accounts audited by a Chartered Accountant before submitting a return under Rule 180(1) of DSER, 1973. The documents submitted by the school for evaluation of the fee hike proposal were taken on record. Review of the audited financial statements including the Independent Auditors Report of FY 2021-22 revealed that:

- a. The Independent Audit Report was not issued in the format prescribed by Standard on Auditing 700 (SA-700), as defined by the Institute of Chartered Accountants of India (ICAI). Because the

majority of the content of the Independent Auditors' Report was missing, such as the auditors' and management's responsibilities.

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

5. 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.

6. 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	3,143
EWS Students*	454
% of EWS students	14.44%

*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 has been finally evaluated/ concluded that:



1. The total funds available with the school for FY 2022-23 amounting to **INR 29,19,90,148** out of which the expected expenditures for FY 2022-23 to be **INR 32,54,23,319**. This results in net deficit of **INR 3,34,33,170** for the FY 2022-23. The details calculation is provided below:

Particulars	Amount (in INR)
Cash and Bank balances as on 31.03.2022 as per Audited Financial Statement of FY 2021-22	43,09,420
Investments as on 31.03.2022 as per Audited Financial Statement of FY 2021-22	47,26,930
Bank O/D	-2,96,55,193
Liquid fund as on 31.03.2022	-2,06,18,843
Add: Recoverable from society for expenditure incurred on luxury car (Refer Financial Suggestion No. 1)	26,01,700
Add: Recovery from the society for expenditure incurred on construction of the school building (Refer Financial Suggestion No. 2)	6,63,09,879
Add: Recovery of Interest paid on loans obtained for bus purchase (Refer Financial Suggestion No. 3)	99,88,414
Add: Salary paid to Director in FY 2014-15 to 2016-18 (Refer Financial Suggestion No. 4)	40,54,500
Add: Fees for FY 2021-22 as per Audited Financial Statements (Refer Note No. 2 Below)	26,75,04,011
Add: Other income for FY 2021-22 as per audited Financial Statements (Refer Note No. 2 Below)	8,92,369
Add: Additional income of annual charges and development fund (Refer Note No. 2 Below)	90,94,166
Less: Arrears of fee recorded in FY 2021-22 related to FY 2020-21. (Refer Note No. 2 Below)	4,29,68,884
Total available funds for FY 2022-23	29,68,57,311
Less: FDR in joint name with DOE	5,59,536
Less: FDR in joint name with CBSE	6,67,394
Less: Student Security Deposit (Refer Financial Suggestion No. 5)	-
Less: Development Fund as per Audited Financial Statements of FY 31.03.2022 (Refer Financial Suggestion No. 6)	1,40,233
Less: Investment made with LIC against provision made for retirement benefits (Refer Financial Suggestion No. 7)	35,00,000
Less Depreciation reserve fund as on 31.03.2022 (Refer Note No. 3 Below)	-
Estimated Available Funds for FY 2022-23	29,19,90,148
Less: Budgeted Expenditure for FY 2022-23 (Refer Note No. 4 and 5 Below)	26,99,68,417
Less: Arrears of 7th CPC as provided by the school (Refer Note No. 6 Below)	5,54,54,902
Estimated Deficit	3,34,33,170

Note 1: Fixed deposit, income and expenditure related to transport facility has been considered in above table.

S. No	Particulars	Amount In INR	Remarks
1	FDR in Joint name of Manager and CBSE	6,67,394	Considered separately.
2	FDR in Joint name of Manager and Directorate of Education	5,59,536	Considered separately.
3	Investment with LIC	35,00,000	Considered separately.
	Total	47,26,930	

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.

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 in 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	17,29,17,472	17,29,17,472	
Annual Charges	2,67,47,333	3,14,67,451	The school recorded 85% of the income in the audited financial statements. Therefore, it has been grossed up.
Development fund	2,47,86,272	2,91,60,320	

Similarly, annual charges and development fees amounting to INR 4,29,68,884 related to FY 2020-21 recorded in FY 2021-22 has been excluded while calculating fund position.

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 proposed by the school has been considered while deriving the fund position of the school except the followings:



Heads	Proposed Amount (INR)	Amount Disallowed	Reasons
Teaching staff	14,75,00,000	4,13,65,483	Excess salary expenditure proposed by the school of INR 4,13,65,483 has not been considered while deriving the fund position of the school. Considering that salary arrears proposed by the school has been considered separately. This was discussed with the school during the personal hearing.
Salary arrears of 7 th CPC	8,77,24,454	8,77,24,454	Separately considered.
Impact of 7 th CPC	4,93,86,480	4,93,86,480	
Transportation Fund expense	3,68,50,000	3,68,50,000	Neither income nor expenditure related to transport facility has been considered.
Solar Power System	35,00,000	35,00,000	Not in accordance with rule 177 of DSER, 1973

Note 5: While evaluating the fee hike proposal, the department considers how much liquid funds schools would require for a particular session for smooth operation without compromising the quality of education. Thus, while deriving the fund position of the school, all legitimate revenue as well as capital nature expenditures in accordance with the provisions of DESAR, 1973 and the pronouncement of Courts judgment have been considered. Therefore, the balance of the other current assets and other current liabilities has not been considered because these are cyclic in nature, as the same would have been part of the budgeted income and expenditure of the school in earlier years. Although it is reflected in the financial statements at the end of the financial year.

Note 6: The 7 CPC arrear calculation submitted by the school of INR 13,71,10,934, while reviewing the arrear calculation few errors/mis-calculation were observed. During the personal hearing, the same was discussed with the school and the school was requested to submit correct calculations. However, no response was received. Hence a reminder mail dated 28.11.2022 was sent to the school to re-submit the salary arrears related to permanent employees. After that, the school vide its email dated 30.11.2022, re-submit the salary arrears of INR 5,54,54,902. The re-submitted details were reviewed and found appropriate, accordingly, the same has been considered while deriving the fund position.

- ii. In view of the above examination, it is evident that the school does not have adequate funds for meeting all the operational expenditures for the FY 2022-23. In this regard, the directions issued by the Directorate of Education vide circular no. 1978 dated 16 April 2010 states.

"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 not available with the School to carry out its operations for the academic session 2022-23. Accordingly, the fee increase proposal of the school may be accepted.

AND WHEREAS, it is noticed that the school has paid INR 8,29,54,493 towards payment to director, construction of school building, repayment of loans and purchase of cars incurred in contravention of the provisions of DSEAR, 1973 and other orders issued by the departments from time to time. Therefore, the school is directed to recover the aforesaid amount from society/ management. The receipts along with copy of bank statements showing receipt of the above-mentioned amount should be submitted with DoE, in compliance of the same, within 30 days from the date of issue of this order. Non-compliance with this direction shall be viewed seriously as per the provision of DSEAR, 1973 without providing any further opportunity of being heard.

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

AND WHEREAS, it is relevant to mention charging of any arrears on account of fee for several months from the parents is not advisable. not only because of the additional sudden burden fall upon the parents/students but also as per the past experience, the benefit of such collected arrears is not passed to the teachers and staff in most of the cases as was observed by the Justice Anil Dev Singh Committee (JADSC) during the implementation of the 6th CPC. Keeping this in view, and exercising the powers conferred under Rule 43 of DSER, 1973, the Director (Education) has accepted the proposal submitted by the school and allowed an increase in fee by 15% to be effective from 01 October 2022.

AND WHEREAS, recommendation of the team of Chartered Accountants along with relevant materials were put before the Director of Education for consideration and who after considering all the material on the record, and after considering the provisions of section 17 (3), 18(5), 24(1) of the DSEA, 1973 read with Rules 172, 173, 175 and 177 of the DSER, 1973 has found that funds are not available with the school for meeting financial implication for the academic session 2022-23. Hence, for smooth payment of salaries and other employee's benefit, the fee hike is required to the School.

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 **Max Fort School, Sector-7, Dwarka, New Delhi- 110075 (School ID-1821225)** filled by the school in response to the Order No. F.DE.-15(40)/PSB/2019/4440-4412 dated 08.06.2022 for the academic session 2022-23, is accepted by the Director (Education) with the above conclusion and suggestions and the school is hereby allowed to increase the fee by




15% to be effective from 1 October, 2022

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

1. To increase the fee only by the prescribed percentage from the specified date.
2. To ensure payment of salary is made in accordance with the provision of Section 10(1) of the DSEA, 1973. Further, the scarcity of funds cannot be the reason for non-payment of salary and other benefits admissible to the teachers/ staffs in accordance with section 10 (1) of the DSEA, 1973. Therefore, the Society running the school must ensure payment to teachers/ staffs accordingly.
3. To utilize the fee collected from students in accordance with the provisions of Rule 177 of the DSER, 1973 and orders and directions issued by this Directorate from time to time.

Non-compliance of this order or any direction herein shall be viewed seriously and will be dealt with in accordance with the provisions of section 24(4) of Delhi School Education Act, 1973 and Delhi School Education Rules, 1973.


This is issued with the prior approval of the Competent Authority.


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

To
The Manager/ HoS
Max Fort School, Sector-7, Dwarka, New Delhi- 110075
(School ID-1821225)
No. F.DE.15 (1107)/PSB/2022 / 405-409
Copy to:

Dated: 16/01/23

1. P.S. to 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) to ensure the compliance of the above order by the School Management.
4. In-charge (I.T Cell) with the request to upload on the website of this Directorate.
5. Guard file.


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