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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 395/2024, I.A. 11099/2024, I.A. 11100/2024, I.A. 11101/2024, I.A. 11102/2024, I.A. 39215/2024 & I.A. 44711/2024**

ABBOTT GMBH AND & ORS.

.....Plaintiffs

Through: Mr. Anirudh Bakhru, Mr. Shakti Priyan Nair, Mr. Parth Bajaj, Ms. Vijay Laxmi Rathi, Advocates (M:9711721913)

versus

ELDER PROJECT LIMITED

.....Defendant

Through: Mr. Kaveesh Nair, Ms. Mahima Mukherjee, Ms. Vidula Mehrotra, Mr. Utsav Saxena,, Ms. Rachael Tuli, Advocates for D-1 (M:9711224074) Mr. Chirag Madan, Mr. Rahul Agarwal, Mr. Ronit Bose, Advocates for D-2 along with Mr. Ankit Jain, DGM Procurement of D-2 in person (M:9999276327)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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27.11.2024

1. The present suit has been filed seeking permanent injunction restraining the defendants in relation to the plaintiff's trademark 'THYRONORM', registered design 'THYRONORM cap design-Fliptop Cap' and the trade dress Pink and White. It is the case of the plaintiffs that the defendants' infringing mark and trade dress, i.e., THYROXIUM has the cap color of Pink and White, which makes the mark/trade dress, deceptively similar to that of the plaintiffs.

2. It is to be noted that when the matter was listed for the first time on



15th May, 2024, learned counsel for the defendants on advance notice had made a categorical statement that defendants shall stop the manufacture and marketing of the pharmaceutical products in trade dress/packaging, impugned by the plaintiffs. The statement of the defendants, as recorded in the order dated 15th May, 2024, reads as under:

“1. At the outset, counsel for the defendant appears on advance notice and states that he has instructions that the defendant shall stop the manufacture and marketing of the pharmaceutical products in trade dress/packaging, impugned by the plaintiff. The said assertion is made by the counsel for the defendant without prejudice to rights and contentions.

xxx xxx xxx”

3. This Court notes that when the matter was listed for hearing on 11th September, 2024, learned counsel appearing of the defendants again reiterated the undertaking before the Court that the defendants had already stopped manufacturing, marketing and sale of the product under the impugned trade dress.

4. Subsequently, learned counsel for the plaintiffs brought to the notice of this Court that the listings of the impugned products of defendant no.2, are still available, on third party websites. Thus, this Court notes the submission of learned counsel appearing for the defendants that letters have already been written by the defendants to the various E-commerce websites to bring down the impugned listings. However, as per learned counsel for the plaintiffs, the listings of the products of the defendants are still visible on E-commerce websites.

5. Today, defendant nos. 1 and 2 are present before this Court, pursuant to the directions issued by this Court.

6. Defendant nos. 1 and 2 undertake before this Court that they have



already stopped the marketing of their product under the impugned trade dress.

7. The defendants have handed over to this Court photographs showing the new trade dress, having been adopted by the defendants.

8. The images of the new trade dress, having been adopted by the defendants, are attached as *Annexure-A* to the present order.

9. Learned counsel for the plaintiffs expresses satisfaction that the new trade dress adopted by the defendants, is not similar or deceptively similar to the trade dress/registered design of the plaintiff, which is the subject matter of the present suit.

10. Defendant nos. 1 and 2 submit that the products with the infringing trade dress have already been recalled from their stockiest. A list of stockiest has been given by defendants who are present in person. The list of the stockiest of the defendants is annexed as *Annexure-B*, to the present order.

11. The defendants, who are present before this Court, undertake and submit in categorical terms that all the products of the defendants with the impugned trade dress, are no longer with the stockiest and that the same have been returned to the defendants. The aforesaid statement made by the defendants, is taken note of, and the defendants are held bound by the same.

12. The defendants who are present in Court submit that all the Pink color caps of all the returned products, have been destroyed.

13. Learned counsel for the plaintiffs submits that in view of the aforesaid undertaking given by the defendants, the suit can be decreed in favour of the plaintiffs, and the plaintiffs shall give up their prayer towards Costs and Damages.

14. Accordingly, the following directions are issued:



- I. The suit is decreed in favour of the plaintiffs and against the defendants in terms of Paragraph-51 (i) to (iii) of the plaint.
- II. The following listings, as occurring in the E-commerce website, are directed to be taken down immediately:

S.No.	URL	Screenshot
1.	https://www.truemeds.in/medicine/thyroxium-50-mcg-tablet-120-tm-tacr1-053198	
2.	https://www.indiamart.com/proddetail/thyroxium-125mcg-tablet-2853687003230.html?mTd=1	
3.	https://www.indiamart.com/proddetail/thyroxium-100mcg-tablet-2854572949191.html	
4.	https://www.indiamart.com/proddetail/thyroxium-100mcg-tablet-2853688379462.html?mTd=1	



5.	https://www.indiamart.com/proddetail/thyroxium-125mcg-tablet-2854556820888.html	
6.	https://www.indiamart.com/proddetail/thyroxium-125mcg-tablet-2853686834573.html?mTd=1	
7.	https://www.indiamart.com/proddetail/thyroxium-125mcg-tablet-2853686940597.html?mTd=1	
8.	https://www.vinspharmaceuticals.com/eve-drops.html#thyroxium-125mcg-tablet	



9.	https://www.indiamart.com/proddetail/thyroxium-125mcg-tablet-2854556820888.html	
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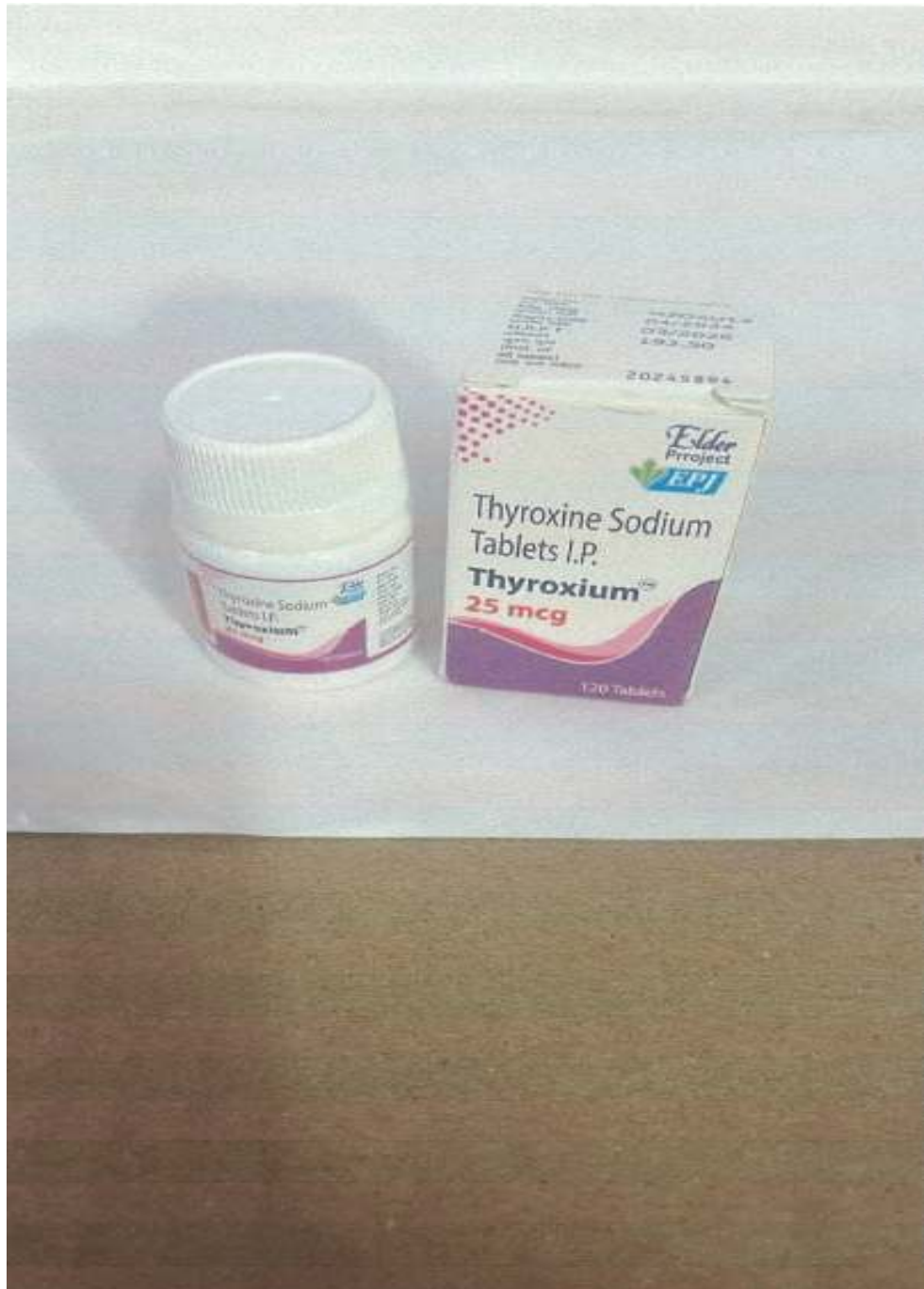
15. In view of the fact that the parties have arrived at a settlement, Registry of this Court is directed to issue a certificate for refund of 50% of the Court fees to the plaintiffs through counsel, i.e., RNA IP Attorneys.
16. Let decree sheet be drawn up.
17. The present suit, along with the pending applications, stands disposed of.

MINI PUSHKARNA, J

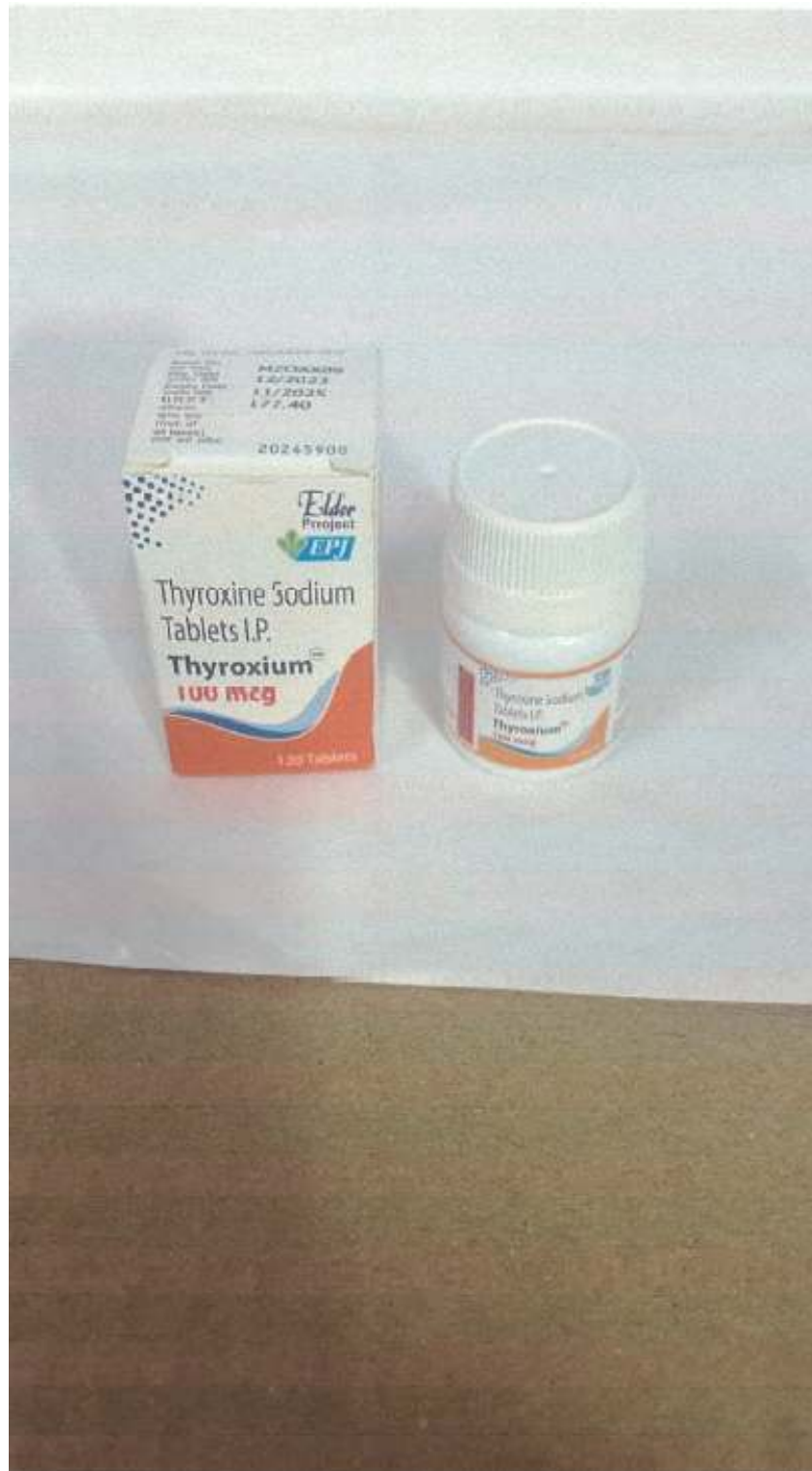
NOVEMBER 27, 2024/au

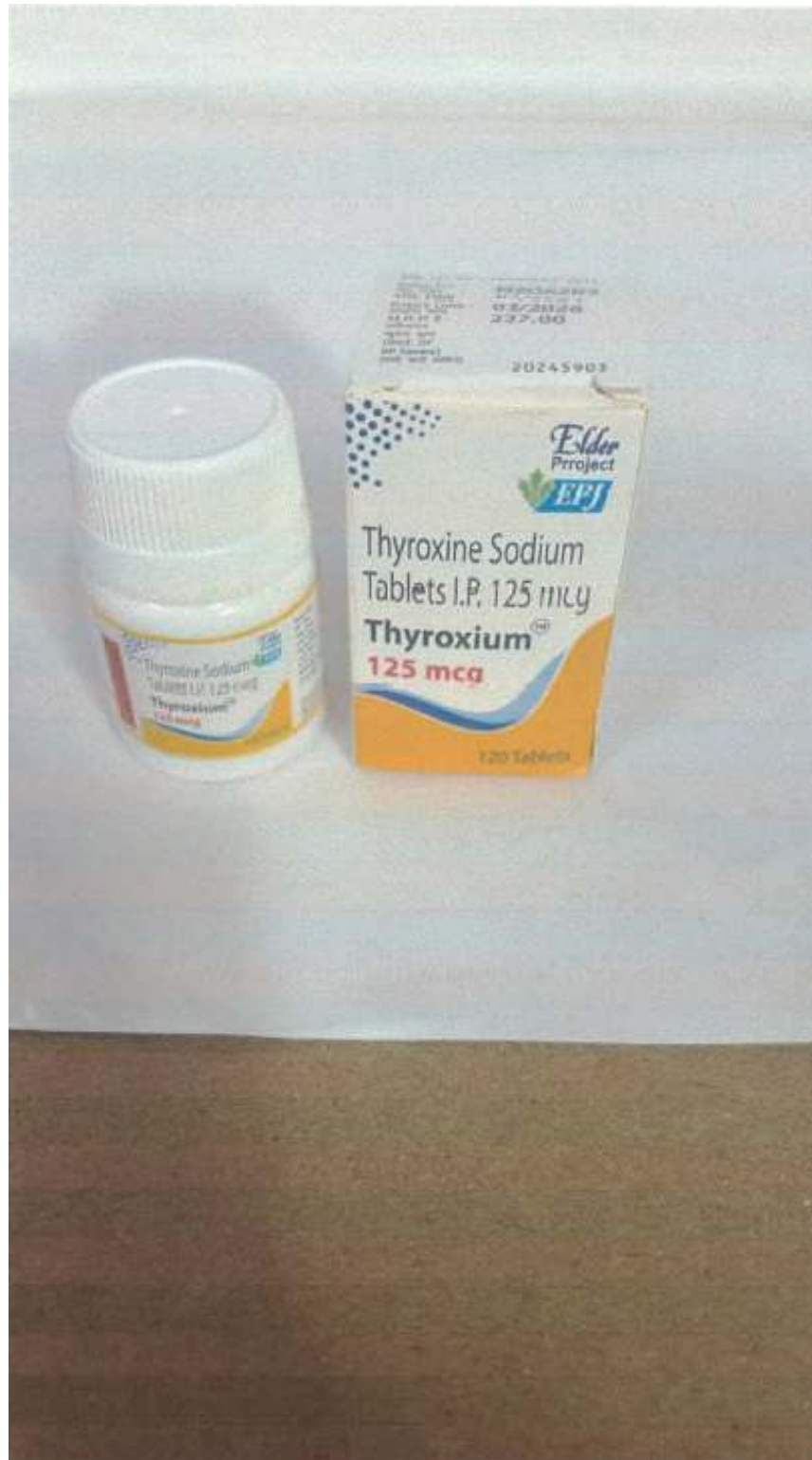


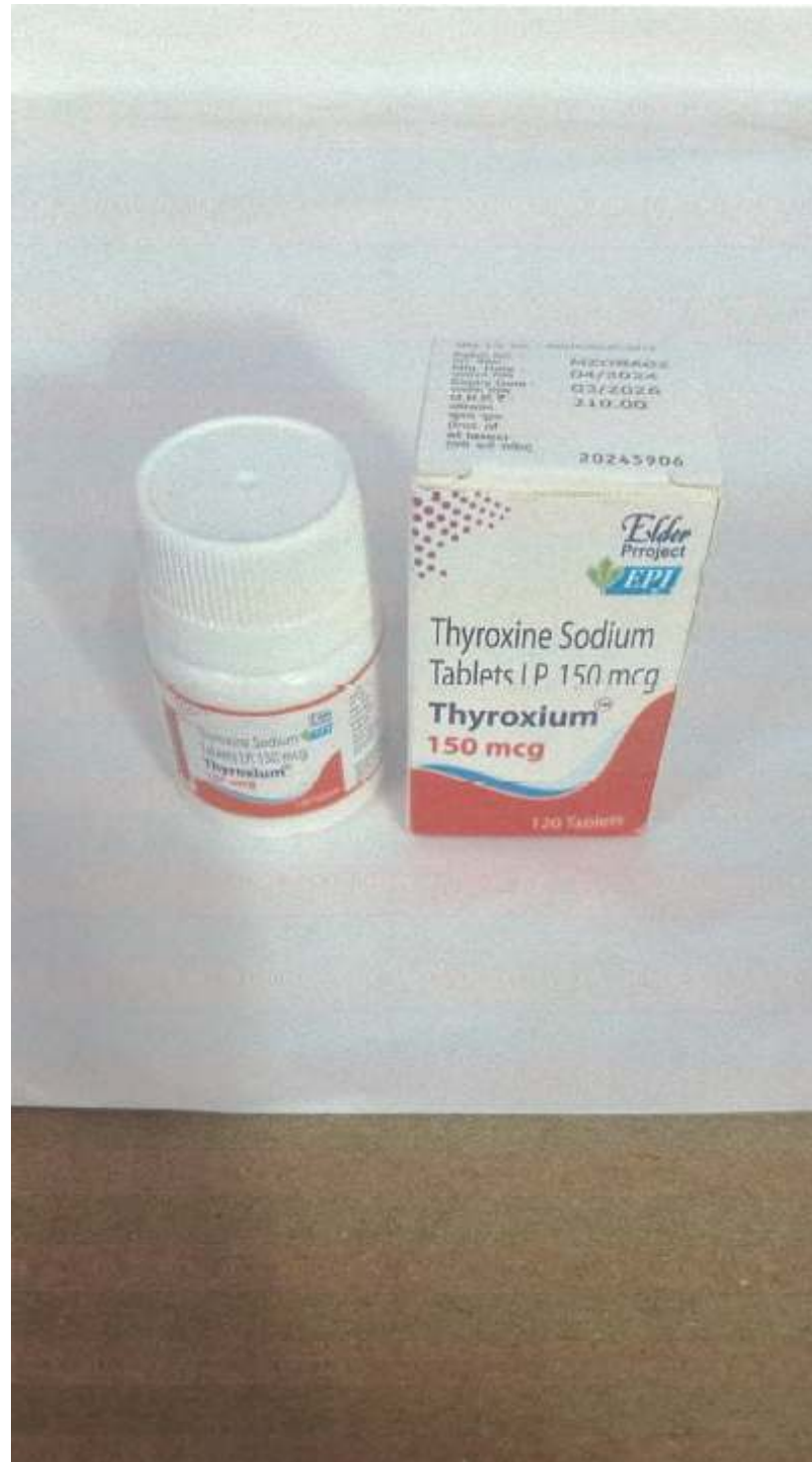
ANNEXURE-A















ANNEXURE-B

SR NO	CUSTOMER	LOCATON
1	SREE LOKESH PHARMA (HYD)	TELANGANA
2	NICHE CARRE	
3	T.S. PHARMA (NEW)	KERALA
4	CHAITANYA DISTRIBUTORS (NEW)	LUCKNOW
5	BHAGWAN PHARMA	THANE
6	KEMCO PHARMA (WB)	KOLKATA
7	NAKODA PHARMACEUTICALS (NEW)	BANGLORE
8	SHASHI ENTERPRISES *	JAIPUR
9	RIO BIOTECH (N)	AHMEDABAD
10	ARIHANT MEDICO (NEW)	PUNE
11	KRISHNA AGENCIES	JALANDHAR
12	SRI SHTI PHARMA - N	JALANDHAR
13	AKHIL ENTERPRISES (A UNIT OF KLPL)	NEW DELHI
14	SIDDHACHAL PHARMA (N)	INDORE
15	SHREERAM MEDICARE	NAGPUR
16	GRACE INDIA	GHAZIABAD
17	R.P.M. PHARMA	RANCHI
18	J.M.V. PHARMACEUTICALS	NEW DELHI
19	INDU PHARMA	GORAKHPUR
20	UDIT ENTERPRISES (N)	JABALPUR
21	MEDICINE DISTRIBUTORS PVT.LTD	ALLAHBAD
22	MUKTA MEDICAL HALL	PANIPAT
23	CHETAN DISTRIBUTORS (N)	VARANASI
24	RISHI ENTERPRISE	CUTTACK
25	NAVEEN MEDICAL STORE (N)	ALIGARH
26	OMKAR DISTRIBUTORS	PATNA
27	DRUG CENTER	RAIPUR
28	BLUE STONE PHARMACEUTICALS	SRINAGAR
29	SRI MAHESH PHARMA (N)	SECUNDRABAD
30	OM DISTRIBUTORS	ROORKEE
31	GANESH DISTRIBUTOR	SILIGURI
32	UPDATE PHARMA	CHANDIGARH
33	HEALTH CARE PHARMA CORPORATION (NEW)	JAMMU
34	AGARWAL DISTRIBUTORS	KANPUR
35	AEON PHARMA (3)	GUWAHATI
36	MURARKA TRADING CO. (N)	JAMSHEDPUR
37	JANTA MEDICAL HALL	JAMMU
38	BINDAL DISTRIBUTORS	BAREILLY
39	HEALTH CARE DRUGS	GUWAHATI
40	AEON PHARMA (NEW)	ASSAM
41	ARORA BROS MEDI LINKERS	PATHANKOT
42	AASTHA ENTERPRISES	DEOGHAR
43	NEELAM PHARMACEUTICALS	JALANDHAR
44	TULSI MEDICARE	CHENNAI
45	SAT GURU PHARMA	NEW DELHI
46	SRI SAI PHARMA (N)	NEW DELHI
47	SHARDA DRUG HOUSE	AHMEDABAD
48	H.R. PHARMA	GHAZIABAD