

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 820 of 2026

IN THE MATTER OF:

Basanti Devi Lohia

...Appellant

Versus

West Bengal Agro Textile Corporation Limited

...Respondent

Present:

For Appellant : Ms. Arati Agarwal, Mr. Rishabh Jain, Ms. Ashika Jain, Ms. Shruti Jain, Mr. Alok Kumar and Ms. Kavya, Advocates.

For Respondent : Mr. Shaunak Mitra and Mr. Patita Paban Bishwal, Advocates.

O R D E R
(Hybrid Mode)

07.05.2026: Heard counsel for the appellant.

2. This appeal has been filed against an order dated 24.03.2026 passed by the adjudicating authority (National Company Law Tribunal, Division Bench, Court No. I, Kolkata), by which order, Section 9 application filed by the appellant has been rejected on the ground of pre-existing dispute. The adjudicating authority in paragraph 6.6 has made following observations:

“6.6 In the present case, the Corporate Debtor asserts that it instituted Title Suit No. 1683/2023 on 17.10.2023, whereas the Section 8 demand notice is dated 26.03.2024. Thus, on chronology alone, the suit precedes the demand notice. This sequence is material because the Code draws a clear line: the dispute must pre-exist the demand notice; disputes raised for the first time after the demand notice may be treated as afterthoughts, but a dispute already before a judicial forum is of a different character.”

3. Learned counsel for the appellant challenging the order submits that Title Suit No.1683/2023 which was filed on 17.10.2023 was a frivolous suit

and suit was filed only to avoid proceedings under Section 9. It is further submitted that there has been settlement in the suit. Learned counsel for the appellant further submits that the corporate debtor in its balance sheet has acknowledged the debt. Learned counsel for the appellant has referred to page No. 435 of the appeal paper book.

4. Learned counsel for the respondent has submits that there was no settlement in the suit and settlement was with respect to third parties.

5. We have considered the submissions of the learned counsel for the parties and perused the records.

6. The present is the case where Title Suit was filed on 17.10.2023 by the corporate debtor and demand notice under Section 8 has been issued on 20.08.2024 much subsequent to filing of the suit. In the scheme of Sections 8 & 9, if suit is pending, Section 9 application cannot be entertained.

7. The submission of the counsel for the appellant that suit was a frivolous suit in which ultimately settlement was entered cannot in any manner make the application under Section 9 maintainable. Section 9 proceedings are not for settling the dispute between the parties nor adjudicating authority has to determine the merits of the claim of the parties. When suit was pending before issuance of Section 8 notice that was a sufficient ground to reject Section 9 application.

8. The issue with regard to acknowledgement in balance sheet cannot be gone into and decided when Section 9 application itself was not to be entertained due to pendency of the suit filed by the corporate debtor.

9. We thus do not find any error in the order of the adjudicating authority rejecting Section 9 application. We, however make it clear that it shall be open for the appellant to take such remedy as available in law.

Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

himanshu/md