

The amendment in procedural law always has retrospective effect, unless there is specific provision barring its retrospective operation

CASE TITLE	Mr. Arun Kumar Sinha vs. Ms. Three Homes Pvt. Ltd ¹
CASE CITATION	CA No. 3840/2020 in IB-432/ND/2019
DATE OF ORDER	08.02.2021
COURT/TRIBUNAL	NCLT, Division Bench III, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Regulation 16 A (9) of CIRP Regulations, 2016

Brief of the case:

Financial Creditors in a class (home buyers) preferred application under section 60(5) of IBC, 2016 raising objections with respect to Resolution Plan. One of the objection raised by the applicants was that the approval of resolution plan by the CoC was not in compliance with the CIRP Regulations (Fourth Amendment), 2020 regarding voting to be done by AR, which came into force on 07.08.2020.

The Respondent stated that it is a cardinal principle of law that every statute or amendment is to apply prospectively.

Decision:

Hon'ble NCLT allowed CA No. 3840/2020 and held that:

“The amendment is procedural law has always retrospective effect, unless there is specific provision barring its retrospective operation, this is the general rule of interpretation... Therefore, there is no effectively participation of the Authorised Representative of the home buyers in the voting process conducted for approval of Resolution Plan... The third objection raised by the applicants/homebuyers merits consideration and is upheld.”



QR CODE FOR FULL ORDER/JUDGEMENT:

¹<https://ibbi.gov.in/uploads/order/6a5356c2f51ffebc1c4a0b3fa555a00c.pdf>