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An Empirical Study on Ad-Interim/Interim Measures  
Granted under Section 9 Applications Heard Before  
the Delhi High Court (2021)

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## INTRODUCTION

This report showcases data from an empirical study of applications filed under Section 9 of the Arbitration and Conciliation Act, 1996 (“the Act”) heard before the Delhi High Court throughout 2021. This report was made by extensively and thoroughly analyzing Section 9 applications heard by the Delhi High Court of Section 9 applications heard by the Delhi High Court. However, it must be noted that the applications studied for the purposes of this report should not be treated as an exhaustive list of all such applications heard before the Delhi High Court in the year 2021.

This report seeks to present important legal and statistical parameters including, inter alia stages at which applications were made, the probability of applications being successful and outcomes where interim / ad-interim reliefs were denied by the Delhi High Court.

Section 9 of the Act provides that parties to an arbitration can approach courts to seek interim relief or measures. Such an application for interim relief can be made before the arbitration proceedings, during the proceedings or after the award as been passed, provided such award has not been enforced. Section 9(1) of the Act lists the following reliefs which can be availed by the parties:

- (i)** For the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (ii)** For an interim measure or protection in respect of any of the following matters, namely:
  - (a)** The preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement;
  - (b)** Securing the amount in dispute in the arbitration;
  - (c)** The detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon

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1. Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).  
2. Arcelor Mittal Nippon Steel India Ltd v. Essar Bult Terminal Ltd., (2022) 1 SCC 712.

any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

**(d)** Interim injunction or the appointment of a receiver;

**(e)** Such other interim measure of protection as may appear to the Court to be just and convenient

Further, Section 9(2) provides that if an order of interim reliefs has been passed by a court before an arbitration proceedings have commenced, the arbitration proceedings must commence within 90 days from the date the order was passed or within a time that the court may determine. Additionally, it must also be noted that for interim reliefs to be granted by a court under Section 9 of the Act, the following conditions have to be met:

1. Prima Facie case in favor of the party seeking interim measures
2. Balance of convenience in favor of the party seeking interim measures
3. Possibility of irreparable harm or injury being caused to the party seeking interim relief if such relief is not granted

With this report being published, ArbDossier strives to sustain its endeavor endeavor of providing high quality empirical data and analytical parameters to enable and facilitate arbitration research and practice. This report shall be useful for professionals, students, researchers and other stakeholders in the field of arbitration.

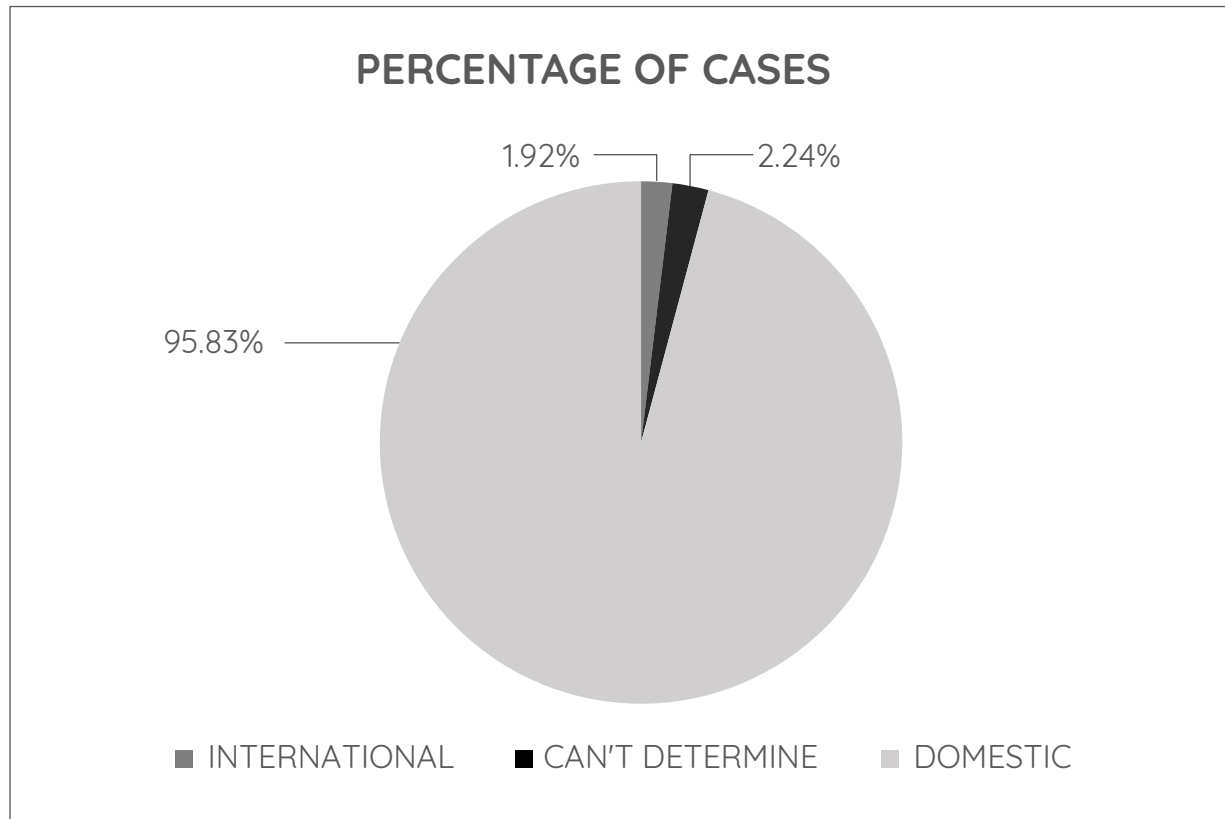
## METHODOLOGY

This report was made after the meticulous examination of approximately 315 applications filed under Section 9 of the Act before the Delhi High Court during 2021.

Further, for determining whether interim or ad-interim relief was granted, the first instance of the Delhi High Court issuing a direction relating to an ad-interim relief/measure has been considered.

In order to acquire the primary data in the form of application numbers, the authors of this report filed RTI applications before the Hon'ble Registrar, Delhi High Court. **Subsequent data pertaining to the orders passed by the Court has been collected from publicly available sources on <http://www.delhihighcourt.nic.in/>.**

## NATURE OF APPLICATIONS & STAGE OF FILING



As can be observed from the above graph, an overwhelming majority of the applications studied pertained to domestic arbitrations. Applications under the category of international arbitrations have been classified as such based on the definition of ‘international commercial arbitration’, as provided under Section 2(1)(f) of the Act. Under the aforementioned definition clause, an arbitration can be said to be an international commercial arbitration if one of the parties falls under any of the following categories:

**(i) An individual who is a national of, or habitually resident in, any country other than India**

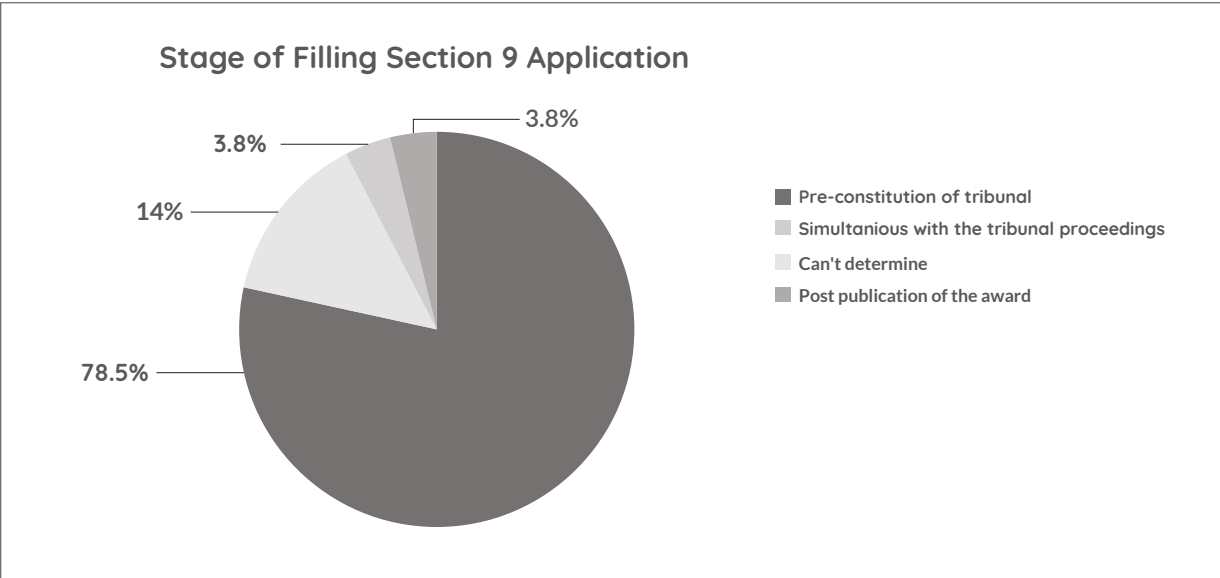
**(ii) A body corporate which is incorporated in any country other than India**

**(iii) An association or a body of individuals whose central management and control is exercised in any country other than India**

**(iv) The Government of a foreign country**

Out of the 6 applications pertaining to international commercial arbitration, 5 applications involved scenarios wherein one party was a body corporate incorporated outside India as per Section 2(1)(f)(ii) of the Act. The remaining application pertained to case where one party was an individual who was not an Indian national as per 2(1)(f)(i) of the Act.

Further, of the 6 applications pertaining to international commercial arbitration, interim / ad-interim reliefs were granted in 4 cases. However, due to the limited sample space, a conclusive trend analysis with respect to the treatment of such applications by the Delhi High Court could not be made. Additionally, the data does not seem to suggest any difference in the Court’s approach to dealing with Section 9 applications when made in the context of international arbitrations, as opposed to domestic arbitrations.



In nearly 79% of all applications filed, the party seeking interim relief under Section 9 of the Act did so prior to the constitution of the arbitral tribunal. This was done to secure their position and ensure that the other party would not engage in any action that would have possibly caused irreparable damage. Although parties to an arbitration can exercise the option to seek interim relief during the pendency of proceedings or after the award has been passed but not enforced under the current position of law, applications made under these circumstances are quite limited. From the 12 applications made during the pendency of the proceedings,

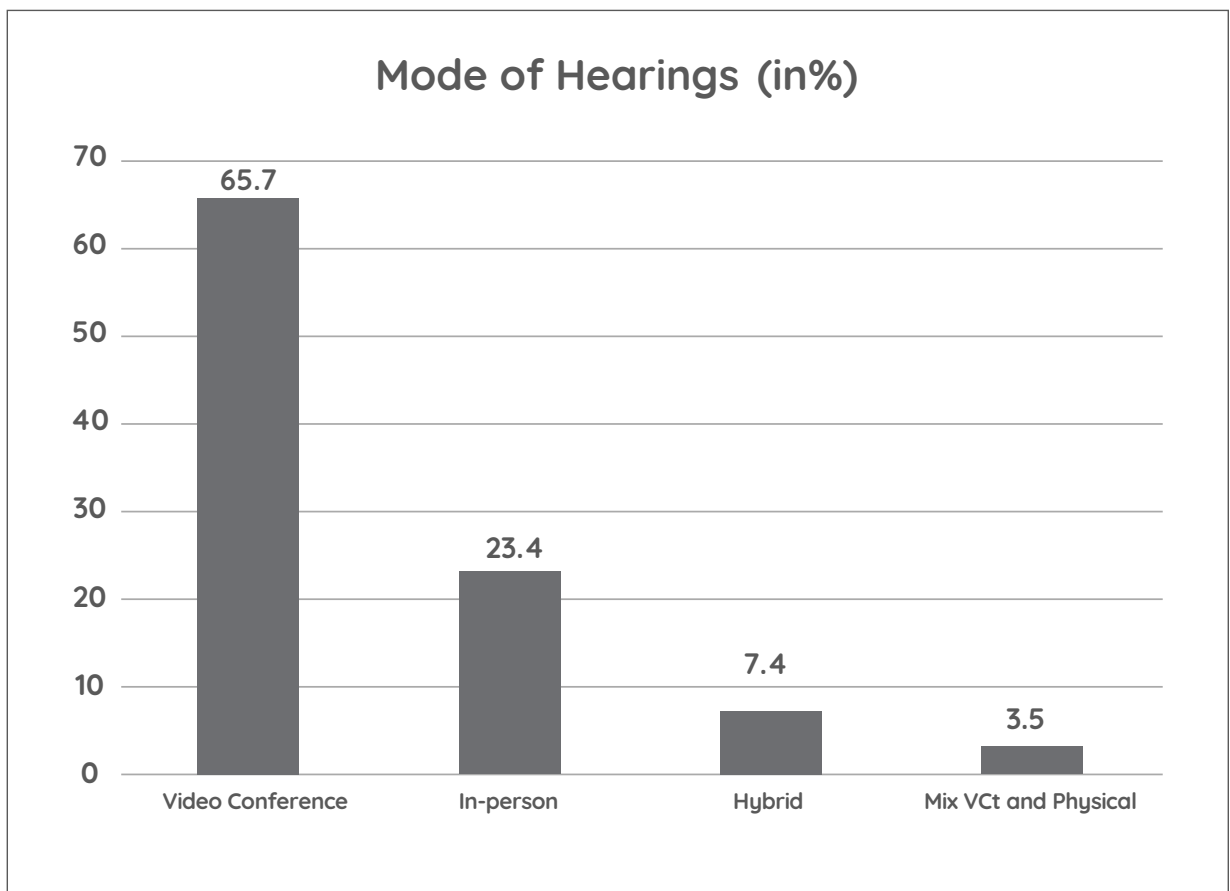
the Court granted interim relief in only 5 cases and out of the 12 applications made after the award was passed, interim relief was granted in 9 cases. Similar to the earlier graph on domestic and international arbitrations, the sample space is not large enough to make a concrete trend analysis.



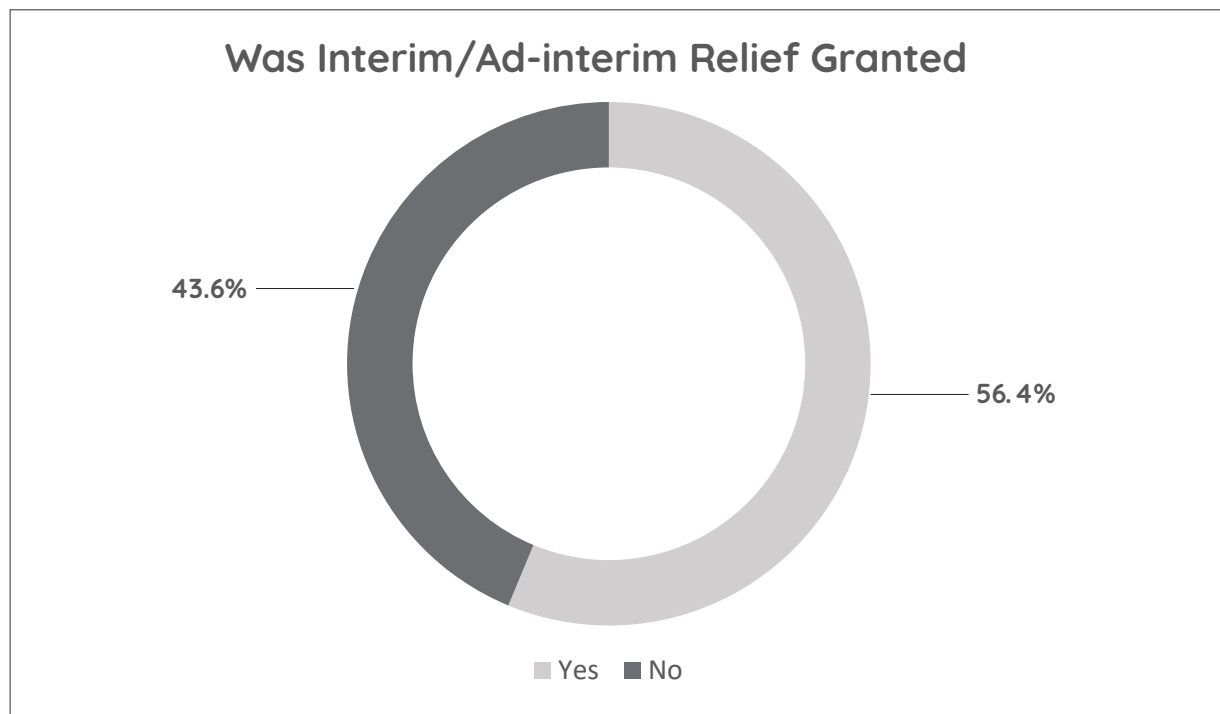
## MODE OF HEARINGS

As the COVID-19 pandemic continued to rage throughout most of 2021, the Delhi High Court followed a trend of resorting to virtual hearings through videoconferencing platforms and this approach was followed for nearly 66% of applications filed. It must also be noted that the Delhi High Court entertained in-person hearings whenever possible to do so.

Certain instances also saw the Court conduct hearings in a hybrid mode (i.e. one party being physically present in court with the other attending virtually) and mixed hearings (i.e. certain hearings were held in person while others were held through a virtual medium). Having studied these applications, there correlation between the mode in which hearings were conducted and the probability of the application being successful.



## PROBABILITY OF GRANT OR REFUSAL TO GRANT AD-INTERIM / INTERIM RELIEF

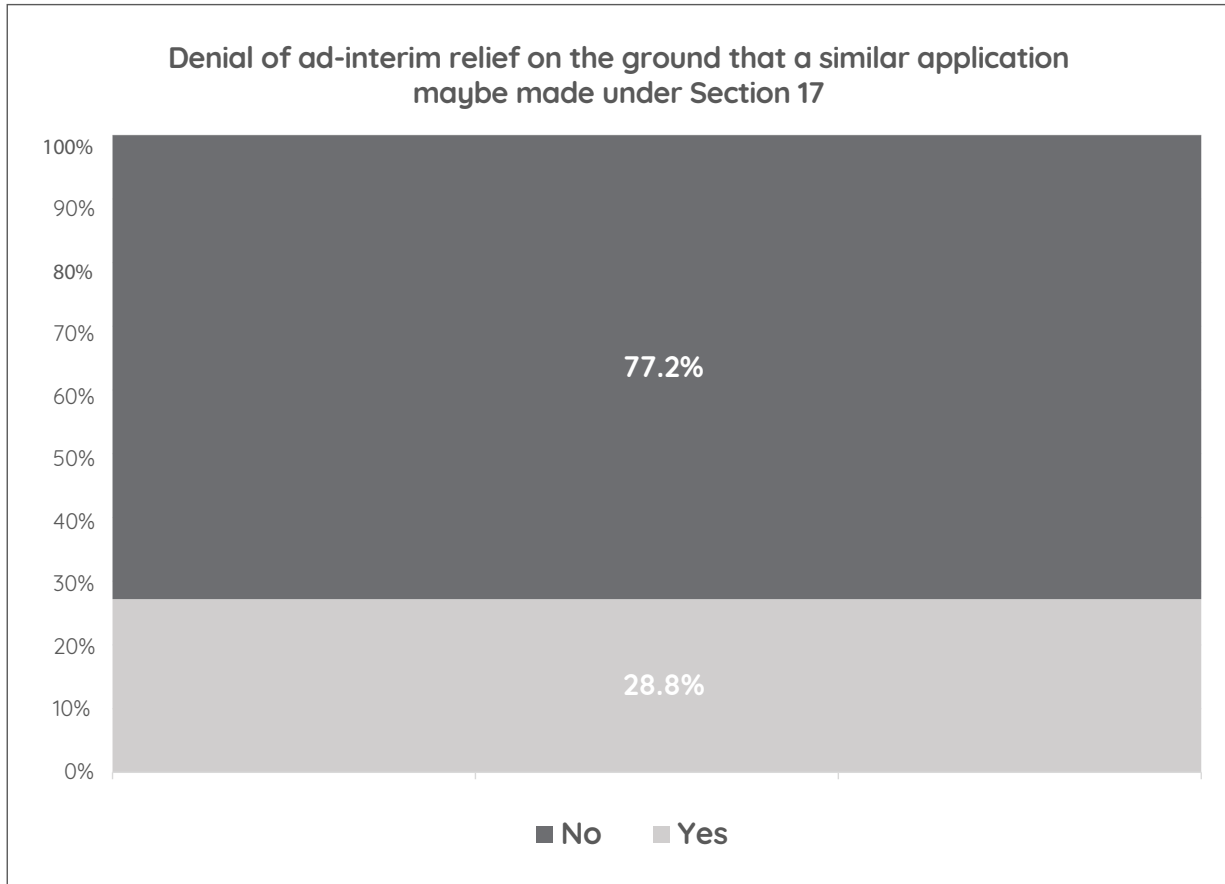


From the applications studied, it can be found that the Delhi High Court takes a balanced approach between granting and refusing interim reliefs with only around 57% of all applications being successful. In most cases where interim reliefs were granted, the Delhi High Court was satisfied that the requirements of the three-stage test were being fulfilled (i.e. there was a prima facie case in favor of the party seeking interim relief, the balance of convenience lay in favor of the party of seeking interim relief and not granting interim relief would cause irreparable harm). The following table illustrates the success rate of applications based on the stage of filing:

Stage at which the Section 9 application was filed	Was ad-interim relief granted	
	No	Yes
Can't Determine	26	17
Post publication of the award	3	9
Pre-constitution of tribunal	100	145
Simultaneous with the tribunal proceedings	7	5

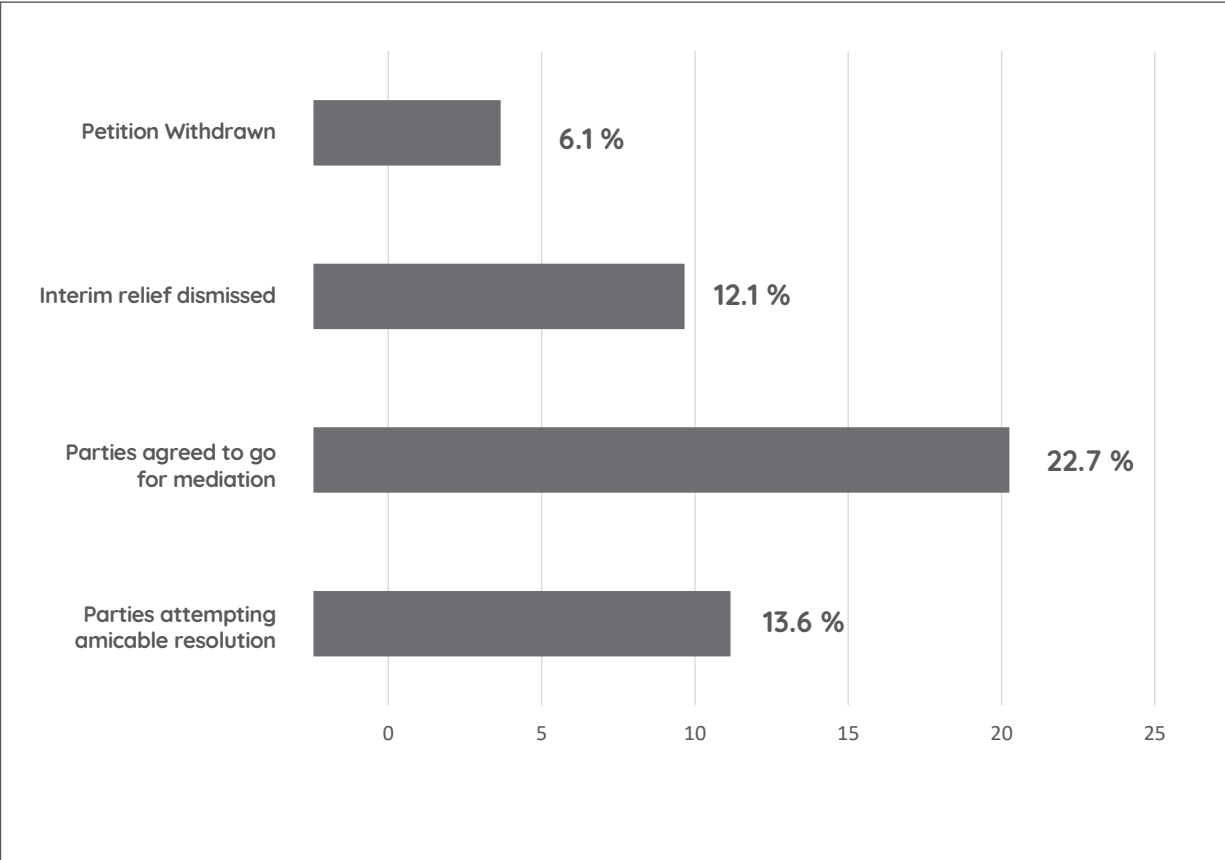
In applications that were filed before the tribunal was constituted (which constituted a majority of all applications surveyed) the rate of success of an application was around 59%, which closely matches the overall probability of success.

## GROUNDS FOR DENIAL OF INTERIM / AD-INTERIM RELIEF



Out of all applications which were unsuccessful, approximately 28% were rejected on the ground that a similar application could be preferred before the arbitral tribunal under Section 17 of the Act. Section 17 of the Act governs the granting of interim reliefs by the arbitral tribunal and largely follows the structure laid down under Section 9 of the Act. In particular, the different types of interim reliefs that can be sought by a party under Section 17(1) and 17(2) are virtually identical to those set out under Section 9.

For applications that were unsuccessful on a ground other than the fact that they were more appropriate to be pursued under a Section 17 application, the following table illustrates the various other grounds for such applications being unsuccessful:



In most cases where the application for interim relief was dismissed, the Court found that the aforementioned three-step test was not being met in the particular factual matrix. It must also be noted that in nearly 6% of cases, the application was unilaterally withdrawn by the original applicant of differing reasons which were often undisclosed. However, in nearly 14% of cases, the application was withdrawn by the applicant on the specific ground that both parties to the arbitration had agreed to resolve their disputes amicably and therefore, there was no requirement of interim relief granted by the Court.

The Court also frequently encouraged parties to settle their disputes through an amicable process of mediation and referred them to the Delhi High Court Mediation & Conciliation Centre. The cases referred to mediation mostly involved instances where the parties to an arbitration proceeding jointly saw merit in resolving their disputes through a more amicable process.

## EX-PARTE ORDERS

Mode of hearings	Was the ad-interim Order passed ex-parte?	
	No	Yes
Hybrid	17	6
Mix of VC and Physical	11	0
Physical	54	19
Video Conference	159	46

Ex-parte orders are orders passed by the court adjudicating the matter without the presence of one of the parties to the suit. The data collected by ArbDossier tabulates the numbers of ex-parte orders for interim relief delivered by the Delhi High Court throughout 2021 categorized by their separate modes. 35% of all hybrid and physical orders were passed ex-parte. 29% of all orders passed through video conference were ex-parte and zero orders in the mix of video-conferencing and physical were passed ex-parte.

Clarification: Physical hearings refer to those hearings that were heard wholly with the physical presence of parties. Video-conference hearings refer to those hearings that were heard wholly through video-conferencing methods. Hybrid hearings refer to those hearings that were heard with one party attending the matter physically while the other chose to attend the matter through video-conferencing methods. Mix of video-conferencing and physical hearings refer to those hearings that utilities a mix of parties holding physical and virtual hearings.