

ROMANIA  
ARGEȘ COMMERCIAL COURT

Case no. 196/1259/2020

Data controller 4263

**COURT CONCLUSION**

Public hearing of November 17th, 2020

Judicial panel consisting of:

PRESIDING JUDGE Ioana-Cristina Ion

Court Clerk Florentina Nicolescu

*(stamp: Romania, ARGES SPECIALIZED COURT)*

Pending for settlement is the cause of professional liability litigation regarding the claimant TUDOR DUMITRU and the defendant ELECTROARGEȘ SA, the defendant ELECTROARGEȘ SA BOARD OF DIRECTORS REPRESENTED BY THE CHAIRMAN – MR CONSTANTIN ȘTEFAN, having as subject matter the authorization to summon the GMS, the authorization to summon the Ordinary General Meeting of Electroargeș SA's Shareholders by the shareholder Tudor Dumitru.

At the roll call made in the public hearing, at first call answered the Attorney Radu Gherbovan and the Attorney Mircea Maier on behalf of the defendants, the claimant being absent.

The legal procedure was legally met.

The Court Clerk read the facts before the court and then:

The defendants' representatives file to the case Meeting Minutes concerning the aspect invoked by the claimant, in the sense that there is a non-contentious procedure, but this application is judged in accordance with a contentious procedure. There is a decision of the Constitutional Court which drew very clearly that, after the reference to the provisions of art. 33 of the old Code of Civil Procedure, the procedure is contentious. In view of the fact that in the Answer to the Statement of Defence, as well as with the application submitted was invoked the fact that there is a non-contentious procedure, and a enforceable Court Conclusion shall be pronounced, from the defendants' point of view a Court Decision should be pronounced, with the possibility to appeal against it and that is not enforceable. On this hearing the sue petition cannot be changed, as against the provisions of art.204 of the Code of Civil Procedure.

The court leaves the case for the second call.

At the roll call made in the public hearing, at second call answered the claimant in person and assisted by the Attorney Cristina Cătănicu, the defendants being represented by the Attorney Radu Gherbovan and the Attorney Mircea Maier.

The Attorney Cătănicu files to the case the Power of Attorney and receipt representing the court fees.

The Meeting Minutes filed to the case by the defendants at the first call are presented to the claimant in the public hearing, through his defender.

The Attorney Cătăniciu shows that the provisions of art. 527 of the Code of Civil Procedure represent an express regulation for this case and mentions that it is a non-contentious procedure to authorize the summoning of Electroargeş SA OGMS.

The defendants show that the Decision of the Constitutional Court cannot be challenged and is mandatory and shows that once the provisions referring to the non-contentious procedure in the cases of summoning the GMS were removed from the Law no. 31/1990, the procedures became contentious. Therefore, the decision can be appealed against and it is not enforceable.

Attorney Cătăniciu shows that the matter is or is not related to the contentious or non-contentious procedure, as to the way in which the defences were made and the points of view expressed.

The court shows that it has to decide on the contentious or non-contentious nature, because one or the other is excluded and has implications on drawing conclusions in the case.

The court considers, as it also considered in the order to summon the parties, that this procedure is contentious, judged with summoning the parties and in which both parties may draw conclusions, the common law procedure being applicable, the contentious one and not the non-contentious one.

Attorney Cătăniciu shows that there is a special regulation, respectively art.119 paragraph 2 of the Law no. 31/1990, which guides to the summoning of the parties, it cannot be judged without the summoning of the Board of Directors and the Manager.

The court discusses with the parties the exceptions invoked in the case, respectively the exception of inadmissibility of minutes 1-3, 15, 16-19, the exception of lack of purpose of minutes 4 – 14, the exception of lack of interest of minutes 2-23, 24, 29 and 30.

The parties' representatives, discussing on the exception of inadmissibility, show that the request to authorize the summoning of the OGMS, on points 1-3, to discuss organizational issues with regard to the procedure of holding general meetings, is inadmissible, in view of the fact that the procedure of holding the OGMS related to these points of the agenda is regulated by law, and it is impossible to insert in the summoning points that would break the legal provisions, to the extent that they would be adopted by shareholders. The request in point I of the agenda is inadmissible, since by this it is proposed in an impermissible way to derogate from the provisions of art.129 paragraph 2 of the Law no. 31/1990 which regulates the procedure of holding the OGMS, only within the OGMS the secretaries of the meeting are designated, and not anticipated, by voting a certain point on the agenda, the claimant proposing a derogating procedure of holding the GMS which is not permitted.

Concerning the point 2, it shows that the summoning of the OGMS to vote the request to appoint a Notary public to supervise the operations is inadmissible, as long as this operation can be decided only within the OGMS by the shareholders, in view of the fact that the provisions of art.129 paragraph 3 of the Law no. 31/1990 expressly shows that "The general meeting shall be able to decide that the operations provided in the previous paragraph to be supervised or fulfilled by a Notary public, at the expense of the company", and this decision shall be made only within the meeting, and not by voting a point on the agenda.

Concerning the exception of lack of interest and the exception of lack of purpose, it shows that on 04.05.2020 the company Electroarges adopted the OGMS Decision no. 107/04.08.2020 (Annex 2), by which the points 4-14 from the application to authorize the OGMS requested by the

claimant were submitted to the shareholders for approval .However, the claimant requested the court to authorize the summoning of the OGMS regarding the points 4-14 from the sue petition, although for these points there was a summoning and an Electroarges OGMS Decision. In view of the fact that Electroarges adopted decisions for the points 4-14, it considers that the application to authorize the OGMS to discuss decisions already adopted by the company lacks purpose. So far as the points 4-14 were discussed by the shareholders and the OGMS Decision no. 107/04.08.2020 was adopted, the claimant's application to summon the OGMS with these points on the agenda lacks interest, both to the provisions of art.119 paragraph 3 of the Law no. 31/1990 and to the provisions of art.33 of the New Code of Civil Procedure, which shows that the interest must be "born and current". But there is no current and born interest for the claimant to request the authorization of the OGMS to discuss points on the agenda which had been already discussed by the OGMS summoned by the Board of Directors, all the more so as the provisions of art.132 paragraph 1 of the Law no. 31/1190 shows that the decisions made by the general meeting within the law or the Memorandum of Association are mandatory even for the shareholders who did not take part in the meeting or voted against.

Gives a control hearing on 15.12.2020.

With the possibility of appeal at the same time with the proceedings on the merits.

Pronounced in public hearing on November 17<sup>th</sup>, 2020.

President,  
Judge Ioana-Cristina Ion  
(stamp: Romania, ARGES SPECIALIZED COURT)

Court Clerk,  
Florentina Nicolescu

HEARING: 15.12.2020 Room 4 at 10,00

Claimant

TC TUDOR DUMITRU – Att. Cătănicu

Defendant

TC ELECTROARGEȘ SA – Att. Radu Gherbovan and Att. Mircea Maier

Defendant

TC ELECTROARGEȘ SA BOARD OF DIRECTORS REPRESENTED BY THE CHAIRMAN – MR  
CONSTANTIN ȘTEFAN - Att. Radu Gherbovan and Att. Mircea Maier

F.N. November 19th, 2020

27.01.2021  
(stamp: ARGES SPECIALIZED COURT,  
This document is a certified true copy  
of the original in the Case no 196/1209/2020  
Registrar (signature)  
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