IN THE MATTER OF AN ARBITRATION UNDER *THE ARBITRATION ACT, 1992*, SS 1992, C A-24.1 AND A DISPUTE UNDER THE LA RONGE SOUTH GOLD JOINT VENTURE AGREEMENT MADE BETWEEN MAS GOLD CORP. (FORMERLY MASUPARIA GOLD CORPORATION) AND GOLDEN BAND RESOURCES INC. EFFECTIVE JUNE 29, 2012

BETWEEN:

GOLDEN BAND RESOURCES INC.
***C*LAIMANT**

- and -

MAS GOLD CORP. (FORMERLY MASUPARIA GOLD CORPOR*A*TION)

RESPONDENT

Paul Saxton
for Golden Band Resources Inc.

Dustin Gillanders
for MAS Gold Corp. (formerly Masuparia Gold Corporation)

Ronald L. Barclay, Q.C.
***A*rbitrator**

DECISION OF THE ARBITRATOR
April 15, 2021

[1] This Arbitration involves a dispute that arose with respect to the interpretation and **implementa**tion of the La Ronge South Gold Joi**nt Venture**

Agreement (JV Agreement) which was made effective June 29, 2012. The parties to the **agreement w**ere the Claimant, Golden Band Resources Inc. (Golden Band) and MAS Gold Corp. (MAS) which wa**s previously named Masuparia Gold Corporation.**

[2] In this matter I was, by the consent of the parties, appointed Arbi**trator pursuant to an** Arbitration Agreement dated February 25, 2021, as the MV Agreement provided that all disputes

arising from the interpretation or implementation of the agreement were to be resolved by Arbitration.

[3] After the Arbitration Agreement (the Agreement) delineated the issues, it prescribed the **procedure** to be followed in the A**rbitration. The Agreement provided that the award** of the Arbitrator

will be final and bind**ing upon each of the parties and wi**ll not be subject to appeal or judicial review.

It shall be **a condition of the appointment that the Arbitrator shall maintain in str**ict confidence, all documents and other materials and all information disclosed by or on behalf of the participants.

[4]
As to procedure, Section 5 of the Agreement states that:

5.
Arbitration Procedures The procedural rules set out in *The Arbitration Act, 1992* (Saskatchewan) shall apply, provided that: (a) The place of the arbitration shall be in Saskatchewan. The arbitration trial shall

be a virtual hearing. The Arbitration shall be determined by the material filed with the arbitrator including affidavits and other r**elevant documentation; (b)** The decision of the arbitrator shall be r**endered in writing with all reasonable expedition; and** (c) The costs and expenses of the arbitrator shall be borne by the Participants.

[5] The Agreement also provides that the Arbitrator is governed by the l**aws of Saskatchewan**

and that all disputes involving this Agreement shall fall within the exclusive jurisdiction of the **Saskatchewan Courts.**

Issues Before the Arbitrator

[6]
Section 4 of the Arbitration Agreements sets forth the issues as follows:
s:

(a)
Whether all expenses claimed (including the Invoice) are properly payable under the JV **Agreement by Golden Band;**

(b)
Whether there has been a lack of funding of any Mandatory Program by Golden Band;

(c) Whether MAS has met the **circumstances and the provisions in S**ection 16.4 of the JV

Agreement for there to be a Mandatory Program between October 1 and December 31, 2016; (d) Whether M**AS was required to obtain the approval of the Management Committee or Golden**

Band for the alleged P**rogram;** Whether MAS complied with the **terms and provisions** of the JV Agreement including with

respect to Programs or proposed Programs; (f) Whether the dilution pr**ovisions in Sectio**n 16.5 of the **JV Agreement** apply; (g) Whether Golden Band's in**terest under the JV Agreement has** been diluted; and (h) Whether MAS and/or Golden Band:

(i) is in breach of the JV Ag**reement;** (ii) has breached its duty of honesty and good faith in the performance of its obligations

pursuant to the JV Agreement; (iii) has been negligent or its conduct has constituted wilful misconduct concerning the JV

Agreement; (iv) would be unjustly enriched by the alleged dilution of Golden Band's interest in the Joint

Venture; (v) did breach a fiduciary duty to Golden Band; and/or (vi) did, by purporting to dilute Golden Band's interest in the Joint Venture, wrongfully

convert a portion of Golden Band's interest in the Joint Venture; (i) Whether Golden Band is entitled to relie**f from forfeiture** of the portion of Golden Band's

interest in the Joint Venture which MAS alleges has been diluted (the "Alleged Diluted Portion"); What, if any, **interest does Golden Band currently have in the Joint Venture as a res**ult of the Diluting Events and in the event that Golden Band's interest is found to have been diluted below 10% that the JV Lands should be tra**nsferred to MAS.**

[7]
The JV Agreement provided, and the parties agreed as follows:

(a)
the terms of a pre**vious joint venture agreement called the Greywacke Joint Venture** Agreement would be superseded by the terms of the JV **Agreement; and the parties would enter the JV Agreement for the purposes of expl**oring the property (as

defined therein) and, if de**emed warranted, to bring all or a portion of said proper<u>ty</u> into comm**ercial production and operating a mine for the purpose **of extracting and producing minerals.**

JV Lands

[8] In total the following mineral dispositions are currently owned by the JV Agre**ement,** S-113755, S-113754, and S-113351. In addition, the JV Agreement holds a beneficial interest in certain mineral dispositions currently owned by 1542651 Alberta Ltd. being mineral disposition CBS-7396.

[9] The joint venture property listed in the JV Agr**eement and the JV Lands as defined above are**

different as a result of the consolidation of mineral parcels over time. The joint venture properties

as listed in the JV Agreement have largely bee**n consolidated into the JV Lands.**

<u>History</u>

[10] MAS is a Canadian gold mining company and operates out of offices in **Saskatoon and**

Vancouver. In addition, it has a field location in La Ronge, Saskatchewan. MAS has one major asset

and one main purpose and that is to develop a gold mine in the La Ronge gold belt region of

Saskatchewan. According to the Affidavit of Andrew Davidson, the Chief Financial Officer of MAS,

this region is prolific and under explored.

[11] Golden Band is a Canadian company with offices in Vancouver, BC and is a wholly owned subsidiary of ProCon Holdings Inc. which in turn is wholly owned by China CAMC Engineering Co.

Ltd. This la**tter company is a Chinese State enterprise.**

[12] Golden Band is a former gold producer engaged in exploration mine development and **extraction** of gold ores in the La Ronge gold belt in North**ern Saskatchewan and was listed on the** TSX Venture Exchange in Canada under the symbol GBN.

[13] Golden Band's projects, include the underground Roy Lloyd Mine and the open pit Golden **Heart and Greywa**cke Mines. Golden Band processed ore at its Jolu Mill. It produced gold from April 2011 to December 2013.

[14] High op**eration costs and lower than anticipated grades from the Roy Lloyd and Golden Heart** mines hindered Golden Band's ability to continue operating economically. In February 2014, it **suspended all mining and milling operations and placed all operations into care and maintenance**

mode indefinitely. See *Golden Band Resources Inc. (Re),*** 2018 SKQB 284 (CanLII), Meschishnick J.

at para.
1.

[15] On April 15, 2016, Golden Band filed a Notice of Intention to file a proposal under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*]. One of the assets shown on Golden Band's balance sheet through the insolvency proceeding was an interest in the Greywacke deposit. It was acknowledged as well throughout the insolvency proceedings by Golden Band, that its interest in the

Greywacke deposit was held in the JV Agreement with MAS. Justice Meschishnick granted an order

that any claim by MAS against Golden Band arising out of the JV Agreement is discharged and

distinguish
ed.

[16] The relevance of the decision of Meschishnick J. to these proceedings is the provision that his order does not affect any claim by MAS arising out of the JV Agreement after April 15, 2016. It is critical to underscore that this Arbitration was not commenced until January 28, 2019, and is the second arbitration between the parties. The first arbitration was stayed.

The Operator

[17]
Under the terms of the JV Agreement MAS was named the Operator. An Operator's duties

under the JV Agreement are prescribed by Section 6(1). This Section reads:

6. OPERATOR 6.1 Operator

Masuparia shall be the **Operator effe**ctive as of the date hereof. Masuparia accepts the **appointment and agrees to act as Operato**r of the Joint Venture until such ti**me as it resigns** pursuant to Section 6.2, or i**s removed as Operator pursua**nt to Section 6.3; provided that **prior to the preparation of a draft Economic Assessment on any portion of the Property, the** Property shall be divided into a Projec**t Area or Areas representing the portion of the** Property to be subject to such Economic Assessment and Golden Band shall a**ct as operator** of the new Project Area for the purposes of such E**conomic Assessment and subsequent Programs carried on in** respect of such Project Area. The pr**ovisions of th**is Agreement shall **apply *mutatis mutandis* to the new Operator f**or the new Project Area. Masuparia shall furnish the Partie**s with a detailed statement showing those already incurred Joint Venture Expenses which Masuparia believes are prope**rly allocable to each proposed Project Area.

[18] As Operator MAS was granted certain rights and also had c**ertain responsibilities which were** prescribed by Section 7. A summary of these rights and responsibilities as prescribed by Section 7

are:

(a)

(b)
to have full, complete and exclusive control, charge and supervision of the property **and the assets** (of the JV) and the sole and exclusive right and authority to supervise, **manage and** carry out all ope**rations and to incur the costs required for that purpose;** to pay all costs properly incurred promptly and when due; **to perform and file such assessment work or make payments** in lieu thereof and pay **such rentals. taxes or other payments and do** all such other thi**ngs as may be necessary to maintain the property in good stand**ing, including, without li**mitation, staking, restaking, and surveying mining claims, and applying for licenses, leases, grants, concessions, permits, and other rights to and interests in the minerals;**

to keep the property a**nd assets free of all liens and encumbrances; and pursuant to secti**on 16.4 of the JV Agre**ement*, inter alia i*n any year where there is no approved **Program and circumstances r**equire the Operator to incur Costs in order to **maintain**

tenure to the JV Lands, to satisfy obligations **imposed by law, to prevent**
(d)

waste, or to protect the JV Lands, such Costs will be deemed to be approved and each party shall be obligated to contribute their prop**ortionate sh**are (the "**Non Discretionary Costs").**

[19] The JV Agreement reflects that MAS shall act as the Operator of the Joint Venture during the exploration period and Golden Band shall act as the Operator thereafter. Under the JV **Agreem**ent, "Party" or "Parties" means MAS and Golden Band and"Participants" means a party that

holds an interest in the JV Agreement. Therefore, this would include both MAS and Golden Band.

[20] It is not without significance that one of the critical provisions of the JV Agreement is the section that pertains to the dilution of the interest of one of the parties. This usually arises where one of the parties to the JV Agreement has failed to respond to the Operator's formal cash call to fully fund its portion of the Exploration Programs.
ms.

[21] The relevant Exploration Programs and Dilution for Non-Contribution pro**visions are**

contained in the JV A**greement and provide in part as follows:**

8. **EXPLORATION PROGRAMS 8.1 Exploration Programs** Prior to October 31 or such other date as the M**anagement Committee may agree of each** year, the Operator will prepare and submit to the Parties a draft Exploration P**rogram and Budget for consideration by the Management Committee**. Every draft Explo**ration Program will contain a statement in reasona**ble detail of the proposed Exploration

Operations and **estimate**s of all Exploration Costs to be incurred for the **following Operating Year. The** Operator will be entitled to include in the Budget for each draft Pro**gram an allowance of** up to 10% for contingencies. All Exploration Operations will be conducted, **Exploration** Costs will he incurred, and Assets will be acquired, only **pursuant to approved Exploration Programs.**

8.4 Contributions to Exploration Programs The Operator will be enti**tled to request cash advances ("Cash Calls") from the Participants** who have elected, or been deemed to have elected, to contribute to the current Program at the beginning of the last month of **each quarter in respect of Costs expected to be incurred** by or on behalf of the Operator during the following quarter plu**s a reasonable a**dditional

amount for working capital, and each such Participant will comply with such reque**st within** ten (10) **Business Days of rec**eipt thereof. Each such request will include a **statement of account reconciling amounts previously advanc**ed by the contributing Particip**ants against** actual Costs incurred and paid by the Operator, and appropriate adjustments will be made as required to the amount of cash requested by the Operator in respect of the then **current** month. If the Operator suspends or pe**rmanently terminates an** Exploration Program, then **any funds advanced by a Participant in excess of t**hat participant's E**xploration Program Percentage of Explorat**ion Costs actually incurred in connection with that **Exploration Program will be refunded forthwith.**

8.6
Dilution for Non-Contribution

If a Participant elects not to contribute to the Exp**loration Costs of any Exploration Program** for an individual project, then the Interest of that Participant in that projec**t expressed as a percentage wi**ll be dilute**d and determined by the following f**ormula (if a Participant does not fully c**ontribute its Proportionate Share of the Exploration Costs of any Exploration Program for an i**ndividual project, then the Interest of that Participant in that project will be diluted as

set forth in Section 16.5):

Participant's Interest =

$$\frac{(AB+Y)}{B+D}$$

Where:

A = the Interest of the Participant being diluted prior to the start of the Relevant Program, as defined below; B=the sum of all deemed and prior contributions of all participants prior to the start of the Relevant Program including acquisition costs; Y = the actual contributions (if any) of the diluting Participant to the Relevant Program; and D= the total amount actually contributed by all Participants to the Relevant Program; and

"Relevant Program" means, in this Section 8.6, a Program to which the diluting Participant elected not to contribute and the Program is subsequently funded by the
other Participant **increasing its contribution** by the amount of the shortfall. The non-diluting Participant's interest will be adjusted accordingly and, if there **is more than one non-**diluting Participant, then the Interests of the non-diluting Participants will be adjusted in proportion **to their respective Exploration** Program Percentage. A Participant whose Interest has been reduced to 10% or less will have its Interest **converted to** a 2.5% **Net Smelter Returns royalty, in accordance** with Section 10.2, with no further opportunity **or obligation to contribute in any Program. The maximum percentage of Net Smelter Returns royalty** that shall be payable to all parties pursuant to this Section 8.6 shall not exceed 2.5% and if more than one party is entitled to an interest in Net Smelter Returns,

then such parties shall divide the 2.5% interest **equally, unless otherwise agreed by the parties.**

[22]
Golden Band and MAS made certain **warranties and representations which were**

agreed to

in the JV Agreement. These **warranties inc**lude the follow**ing provisions:**

3.2 Representations and Warranties of Golden Band Golden Band represents and warrants as follows to Masuparia and acknowledges and **confirms t**hat Masuparia is rely**ing on such representations and warranties in entering into this Agreement:**

(a) it holds its in**terest in the Property free an**d clear of any lien, pledge, mortgage, lease, sublease, charge, encumbrance or other security interest therein, other than the Royalties and the sec**urity interests granted to Waterton G**lobal Value, L.P.;

(b) other than the agreements it has entered into and will enter into to acquire an interest in the Preview Lake Property and the North Lake Option Property, it **has not entered into any current material agreements and has not made any material commitment in respe**ct of the Property;

it has the experience and expertise in the mining industry to meet its obligations **under and pursuant to this Agreemen**t, including, without limitation, the ability if required to ac**t as the Operator and, as such, to carry on mineral and exploration work** in the Province of **Saskatchewan. 3.3 Representations and Warranties of Masuparia (MAS] Masuparia represents and warrants as follows to Golden Band and acknowledges and confirms that Golden Band is relying on such representations and warrantie**s in entering into this Agreement:

(a) it holds its interest in the Property free and clear of any lien, pledge, mortgage, lease, sublease, charge, encumbrance or other security interest therein, other **than the Royalties;** (b) it has th**e experience and expertise in the mining industry to meet its obligations**
under and pursuant to this Agreement, including, without limitation, the ability to act as the Operator and, as such, **to carry on mineral exploration work in the Province of Saskatchewan.**

Submissions of Golden Band

[23]
In fairness to Golden Band I wish to review the arguments it raised.
nes

[24]
In the Notice to Arbitrate, Golden Band alleges that MAS w**as in breach of the JV Agreement. I**n particular, it alleges as follows:

11. MAS did breach the JV Agreement, including without restriction:

(a) by rendering the Invoice which **was not proper o**r payable; (b) by not meet**ing the circumstances and the provisio**ns of Section 16.4 of the JV **Agreement;** (c) by not obtaining the ap**proval of Golden Band to the alleged Program;**

by not complying with the terms of the JV *A*greement concerning Programs or proposed Programs; and/or (e) by purpo**rting to imp**roperly dilute the interest of Golden Band in the Joint
Venture.

[25]
Further allegation**s advan**ced by Golden Band are as follows:

(a)
Failure to Perform Obligations in Good Faith

12. Golden Band further states that under the common law there is a duty of honest **performance which requires the parties to a contract to be honest w**ith each other in **relation to the performance of their contr**actual obligations. Therefore, in addi**tion to the**

express terms of the JV Agreement: (a) MAS owed a duty to Golden Band that it would perform the JV A**greement** honestly and in good **faith and in a reasonable manner; and** (b) MAS owed Golden Band a duty to act honestly or in good faith in relation to **the performance of the contract**ual obligations of MAS under the JV **Agreement.** 13. Golden Band states that MAS breached its duty of honesty and good faith in the **performance of i**ts obligations pursuant to the JV Agreement. The particulars of such breach by MAS include without restriction those matters described in paragraphs 8(a) through (e) above, its conduct toward Golden Band, its wrongful allegation of a lack

of funding and its purporting of a dilution of Golden Band's interest in the Joint **Venture.**

(b)
Negligence or Wilful Misconduct
ce a

[26] Golden Band contends that MAS was negligent in its conduct or its conduct has constituted

wilful misconduct.

(c)
Unjust Enrichment

[27] Golden Band submits that under common law unjust enrichment occ**urs where there has been** an enrichment of a benefit to a party, a corresponding deprivation of the other party, and the absence of a juristic reason for the enrichment. In its Notice to Arbitrate Golden Band alleges as follows:

16. Golden Band states that if dilution of the interest of Golden Band in the Joint Venture
were to occur, that such dilution would result in an enrichment of or benefit to MAS, **a correspon**ding deprivation of Golden Band, and that there is no ju**ristic reason for such enrichment.**

[28] Golden Band also contends that the purported dilution of its interest in the JV Agree**ment is** a wrongful conversion by MAS of Golden Band's interest in the Joint Venture.

[29]
Golden Band takes the position that MAS owed a fiduciary duty to Golden Band which it

breached by its **actions.**

[30] Golden Band therefore seeks the following remedies which is reflected in paragraph 21 of **its Notice to Arbitrate which reads as follows:**

21. Golden Band therefore cl**aims against MAS for an award, decision, declaration or**
order: (a) That the Invoice dated December 31, 2016 was not proper or payable;

(b)

(g) **(h)**

That there has not been a lack of f**unding of any Mandatory Program by Golden Band;**

That MAS has not met the circumstances and the provisions of Section 16.4 of the JV Agreement for there to be a Mandatory Program between October 1 and December 31, 2016; That MAS did not obtain the approval of the Management Committee or Golden Band for the alleged Program, which ap**proval was required;**

That MAS did not comply with the **terms and provisio**ns of the JV Agr**eement** including with respec**t to Programs or proposed Programs;** That the dilution provisions in Section 16.5 of the JV **Agreement do** not apply; That Golden Band's interest under the JV Agreement has not been diluted; That Golden Band be **granted relief against forfeiture** of the Alleged Diluted **portion;** That MAS holds the Alleged Diluted Portion on a constructive trust or on a **resulting trust for Golden Band;** For an interim injunction, o**r a permanent** injunction**, enjoining or restraining** MAS from dealing with the Alleged Diluted Portion; **Cos**ts of the arbitration including Golden Band's legal expenses, on a solicitor **and his own** client basis, the fees and expenses of the arbitral tribunal and any **other expenses related to the arbitration; Such further and other relief as counsel may advise an**d the arbitral tribunal **may award.**

(i)

[31]
Golden Band did file a written Brief for the Virtual Hearing. Mr. Saxton again makes reference to the invoice of December 31, 2016, and presents a submission consistent with the argument that was contained in the Notice to Arbitrate. As I have already made a decision on this issue (see page 14 and 15 of this decision), it is not necessary to consider it further.

[32]
In its Brief, a summary of its main argument is as follows:

GBR's position remains that: GBR did make contributions to all Mandatory Programs; MAS breached the JV Agreement by not follow [sic] proper procedure as operator as laid out in the JV Agreement; MAS tried to unilaterally dilute GBR's position; GBR followed protocol in its decisions at all meetings of the parties; the Invoice contained billings for services which were not proper in that they were not approved by the Management Committee; that the services and provisions of Section 16.4 of the JV Agreement were not met; that the

dilution provisions in Section 16.5 of the JV Agreement do not apply; the costs in the Invoice were Discretionary costs; that MAS breached its duty of honesty and good faith in performance of its obligations pursuant to the JV Agreement; that MAS breached a fiduciary duty as operator to

Golden Band; that MAS owed GBR a duty to act honestly or in good faith in relation to the p**erformanc**e of the contractual obligations of MAS under the JV **Agreeme**nt; and that MAS management did not follow the J**V Agreement procedures** correctly by unilaterally claiming that GBR's position had been diluted.

[33
]

It is clear and convincing from the only evidence that was adduced at this hearing that with

respect to the diluting events, MAS did comply with the JV Agreement and was therefore entitled **to an order that as Golden Ban**d's interest has been diluted below 10% that the JV Lands should be **transferred to MAS.**

[34] With respect to the allegations raised by Golden Band in its Brief, and in particular the allegations that MAS breached its duty of honesty and good faith in the pe**rformance of its** obligations under the JV Agreement, there is not any evidence adduced by Golden Band to support **this submission.**

Position of MAS

[35] The position of MAS is that it has successfully attempted to advance its gold project in the **La Ronge go**ld belt reg**ion in Northern Saskatchewan for a number of years. However, MAS** contends that its principle hurdle has been unfortunately, the dysfunctional Joint Venture with Golden Band. In particular, MAS advocates that Golden **Band refused to comply with the provisions**

of the JV ***A*greeme**nt and in particular the capital contribution as stipulated by th**e agreement and**

costs and spending associated with the Exploration Programs despite **numerous**

cash calls by MAS since April 15, 2016, Golden Band has not **made any contributions.**

[36] When I make reference to cash calls from MAS (as Operator) they include all costs as defined by Section 1.1(c) of the JV Agreement and include both Mandatory Spending **and costs associated** with the Exploration **Programs.**

Dilution of the Interest of Golden Band

[37]
The evidence reflects that the interest of Golden Band was diluted for non-participation in

the capital contributions and the Exploration Programs below 10%. It is not without significance

that Section 10 of the JV **Agreement provides that a Participant whose interest for an individual** project has been reduced to 10% or less will have their interest in that project converted to a 2.5% Net Smelter Return royalty with no further obligation to contribute to any program. This section further provides that once a party has its **interest reduced** to 10% or less, then it will be deemed to **have assigned and conveyed its interest in t**he project to MAS.

[38] **In view of these provisions, it is necessary to review the evidence to show that the interest**

of Golden Band has been reduced to below 10%.

[39] The dicta of Meschishnick J. reflects that MAS was estopped from asserting any c**laim against Golden Band for expenses incurred prior**

to April 15, 2016, the **matters before me as Arbitrator are after** that date.

Diluting Events

[40]
MAS issued **an invoice on December** 31, 2016, in relation **to costs associated with Mandatory**

Spending undertaken by MAS in the amount of $9,981.05 payable by Golden Band. Golden Band

disputes the invoice. In its Notice to Arbitrate, Golden Band alleges as follows:

8.
Golden Band disputes the allegations of MAS including without restriction, upon the basis that: **(a) The Invoice was not proper or payable including without limitation by reason**
of: (i) the costs in the Invoice were not properly incurred; **(ii) the Invoice contai**ned billing for services which were not proper;

(iii) the costs alleged in the Invoice had not been approved by the
Management Committee or Golden Band; and/or (iv) the consultants or suppliers or their services, which were the subject of
the Invoice, were not approved by the Management Committee or Golden Band; There has not been a lack of fu**nding of any Mandatory Program.**
(b)

[41] In addition, Golden Band contends that MAS did not comply with Section 16.4 of the JV **Agreement. This section reads:**

16.4 Non-Discretionary Costs and Mandatory Programs Notwithstanding Sections 8.1, 8.2 and 8.3, if in any year in which there is no a**pproved Program**

circumstances require the Operator to incur Costs in order to maintain tenure to the Property, to satisfy obligations impos**ed by law, to prevent wast**e or to protect life and property (**"Non-Discretionary Costs), then the Operator will forthwith propose a Program (a "Mandatory Program") to incur those Non-Discretionary Costs and provide each party** with a copy thereof within seven days of when the Operator first becomes aware of the **requireme**nt for and amount of the Non-Discretionary Costs. The Mandatory Program will be deemed to be approved by the M**anagement Committee and ea**ch of the parties will be **obligated to contribute its Proportionate Share of the Non-Discretionary Costs incurred** within 30 days of the receipt of the Operator's invoice, failing which Section 16.5 will apply. Non-Discretionary Costs will be deemed to be Exploration Costs for all purposes of this A**greement.**

[42]
In their Reply to Notice to Arbitrate and, in particular, the allegations with respect to the **invo**ice of December 31, 2016, MAS states that the costs incurred were a part of the Mandatory Spending Program required to keep all permits in good standing and were Non-Discretionary Costs as prescribed in the JV Agreement. Andrew Davidson deposed to these facts in his Affidavit.

[43] It is critical to underscore that Golden Band never complained about the invoice nor did it **adduce any evide**nce to support its allegations. I therefore accept the position of MAS with respect **to this invoice.**

[44] As a result of Golden Band's failure to contribute its proportional share of the Mandatory Spending Program as reflected in the invoice, Golden Band's interest in the Joint Ven**ture was** diluted as prescribed by the JV Agreement to 24.90%. The calculations are set out at Exhibit CC to **the Affidavit of Andrew Davidson.**

S ar

[45] From April 2016 to January 2018, Golden Band had very little involvement in the project. However, it was anticipated there would be a significant increase of the costs attributed to the Joint Venture and it was imperative that Golden Band become involved in the project. Therefore, the Management Committee convened on January 24, 2018 and approved an operating Program and

Budget.

[46] Section 5 of the JV Agreement provides that each party will have the right to appoint two representatives to the Management Committee. Here, Guoquing Kang and Paul Saxton represented Golden Band. This section dictates that the Management Committee considers and approves all

programs and all exploration, construction operating budgets.

[47] On January 30, 2018, MAS wrote Golden Band confirming the matters discussed and the agreement reached at the Management Committee meeting. Their letter reads in part:

We write further to the meeting of the Management Committee of the La Ronge South Gold Joint Venture (the "Joint Venture") held on January 24, 2018 where the 2018 Exploration Program was considered and approved by the Management Committee. In particular, **("Golden Band") advi**sed at the meeting that it is willing to proceed with the 2018 Exploration Program on a without prejudice basis to the ongoing arbitration between Golden Band and Masuparia Gold Corporation ("Masuparia") respecting the conversion of Golden Band's joint venture interest into a royalty (the "Arbitration"). In this regard, Golden Band will provide funding for 50% of the expenses associated with the 2018 Exploration Program in a timely fashion. Once the final ownership percentages are established, any discrepancy in funding shall be made via a refund of excess funding, without interest or any other charge or fee, within 30 days of such discrepancy being determined.

[48] In accordance with the approved program and the JV Agreement, MAS issued a formal cash call to Golden Band on June 6, 2018 and August 17, 2018. These letters read in part as follows:

June 6, 2018 Letter

We write further to the notice of the 2018 Exploration Program originally provided September 15, 2017, and then formally presented at the meeting of the Management Committee of the La Ronge South Gold Joint Venture (the "JV") on January 24, 2018. This letter serves as the operator's formal cash call for Golden Band Resources Inc. ("GBN') to fully fund its portion of the exploration program. In accordance with our agreement at the meeting of January 24, 2018 and Section 8.4 of the Joint Venture Agreement, GBN is obligated to fund 50% of the program cost. MAS Gold Corp. ("MAS"); formerly Masuparia Gold Corporation) will place these funds in trust with its legal counsel **awaiting final determination of the respective joint venture interests** of both MAS and GBN. **Any funding in excess of final joint venture interest made by GBN will be returned to GBN within 10 business days of said determination.** For clarity, and in accordance with Section 8.4 of the Joint Venture Agreement, GBN shall have 10 business days to provide the funds to MAS. As such, funding is required no later than June 20, 2018. Should funding not be received by June 20, 2018, GBN shall immediately be subject to further project dilution. A final copy of the exploration budget is attached.

August 17, 2018 Letter

We write further to your email of August 10, 2018, wherein you provided approval for phase 2 of MAS Gold Corp.'s ("MAS") 2018 exploration program. The full details of the program and the budgeted cost were provided to you by way of email on August 9, 2018 and **are attached again here.** This letter serves as the operator's formal cash call for Golden Band Resources Inc. ("GBN") to fully fund its portion of the new exploration program. If and when received, MAS will place these funds in trust with its

legal counsel until final determination of the **respective joint venture interests** of both MAS and GBN. Any funding in excess of final **joint venture interest made** by GBN will be returned to GBN within 10 b**usiness days of said determination.**

For clarity, and in accordance with Section 8.4 of the Joint **Venture Agreement, GBN** shall **have 10 business days to provide its portion of the new exploration program to MAS. As** such, funding is required no later than August 27, 2018. Should funding not be received by August 27, 2018, GBN shall immediately be subject to further project dilution.

[49] A further demand for payment by Golden Band of their share of the approved payment was **sent by MAS in two separate letter**s on March 18, 2018. The first l**etter summarizes the expenditures** provided by MAS to Golden Band relating to exploration work and claim maintenance of the Preview Lake, North Lake and Greywacke Lake properties up to and including February 28 by MAS **as Operator under the JV Agreement. T**he total cost**s were estimated to be in the range of** $420,000.00 and Golden Band's share was one-half of the total amount, namely $220,903.28.

[50]

In the second letter, MAS **makes referen**ce to the 14 claims it acquired on behalf of the La

Ronge South Gold Joint Venture.

[51] As a result of Golden Band's failure to participate or contribute to the cash call by MAS, its **inte**rest in the JV

Agreement was diluted to, as of September 19, 2019, 10.41%. A notice to this effect was sent by the President and CEO of MAS on September 19, 2019. This letter reads as **follows:**

This letter is to in**form Golden Band Resources Inc. ("GBN") of the Joint Venture Interest** Dilution **that was effective as of Septem**ber 19, 2019 due to a lack of funding of the **mandatory program completed in 2018 and 2019. In accordance with the program summary** provided to GBN, the total cost of the program was $873,261. This pr**ogram was approved at our last joint venture meeting. A cash call was iss**ued for this program, bu**t no response nor cash contribution was ma**de by GBN. In accordance with the **terms of the joint venture agreement**, this results in the use of the dilution formula discussed in clause 16.5 of the joint ven**ture agreement.** As such, this le**tter serves as** notification that the joint **venture interest of GBN, as a result** of this program, has been diluted down to 10.41%.

[52] On September 19, 2019, MAS issued another cash call to Golden Band. This demand was in relation to 2019 expenditures. In particular, it relates to exploration and resource development work and claim maintenance of the North Lake property that are required expenditures to be completed before September 30, 2019. The North Lake Program was a Mandatory Program. The

total expenses were $322,148.00 and Golden Band's share (10.41%) was $36,889.00, which was the **am**ount of the cash call.

**[53
]**

Again, Golden Band refused to respond to the cash call a**nd to contribute. As a result of**

Golden Band's failure to participate in the North Lake Program, the dilution provisions of the JV **Agreement ap**ply (Section 16.5). Therefore, as of December 16, 2019, Golden Band's interest in the

JV *A*greement has been reduced to less
than 10%.

[54] Section 16.5 of the JV Agreement provides that a particip**ant whose interest has been reduced** to 10% o**r less will have its interest conveyed to** a 2.5% roy**alty in accordan**ce with Section 10.2 with no further opportunity or obligation to contribute to any programs.

**Alternative Submission of
MAS**

[55] As an alterative submission counsel for MAS, Dustin Gillanders, filed a Brief and a number of case authorities which considered the principles in contract law of acting in good faith. For the record I will review this submission although in view of my findings with respect to the JV ***A*greement and in p**articular my decision that Golden Band shall transfer their interest in the JV

Lands to MAS forthwith, it is not nec**essary to make any findin**g with respect to this supplem**entary**

**argumen
t.**

[5

6]

MAS made reference to the following case authorities in its **written submission:**

(a)

(b)

Kinbauri Gold Corp. v IAMGOLD International African Mining Gold Corp., [1999] OJ No. 1970, 1999 CarswellOnt 1678; *Mesa Operating Ltd. Partnership v Amoco Canada Resources Ltd.,* 1994 ABCA 94, [1994] AWLD 353 [Mesa]; *Ticketnet Corp. v Air Canada,* [1997] OJ No. 4638, 105 OAC 87;

urce

(*c*)

- 20

(d)

c

Park Avenue Flooring Inc. v EllisDon Construction

Services Inc., 2015 ABQB 478, [2015] AWLD 4043; and *TNT Canada Inc. v Parmalat Dairy & Bakery Inc.*, [2004] OJ SC No. 74, 128 ACWS (3d) *276 [TNT).*
(e)

[57]
In *Mesa*, the Alberta Court of Appeal defined what is meant by good faith at paragraphs 14

16 which state:

14 The second answer of Mr. McDonald was that the dut**y to act in good faith extends** beyond the duty to avoid acting for bad motives. He argued, and the trial judge accepted, that [p. 218]:

In Canada, the test ... does not include the need for the plaintiff to show that the defendant intentionally acted in bad faith... ... **the common law duty to perform in good faith is breached when a party acts in bad** faith, that i**s, when a party acts in a manner that substant**ially nullifies the contractual **objectives or causes significant harm to the other, contrary to the original purposes or expectatio**ns of the parties. **15 I agree wi**th the learned trial judge. My only he**sitation is whether one need, in this discussion, e**mploy the term "good faith". In my view, we should hold carefully to the distinction between the **two sources of rules about contracts**, the law and the co**ntract. Sometimes a rule of law imposes a duty or a constraint upon the parties to a contract *despite* their agreemen**t, as is the case of the rules about illegal c**ontracts and unconscionable contracts. On other occasions, however, the courts impose a rule upon the parties because** we conclude that this *fulfils* th**e agreement. In oth**er words, the duty **arises as a matter of interpretation of the agreement. The source of t**he rule is not the law but the pa**rties. I worry** that the term "good faith" in this case might blur that distinction.

16 A general obligation expressed in terms of good faith is not an obvious part of contract law in England and Canada, although Professor E. P. Belobaba advocates otherwise. See Belobaba, "Good Faith in **Canadian Contract Law", 1985 Special Lectures of the Law** Society of Upper Canada, 73. It is part of the civil law. See *National Bank of Canada v. Soucisse,* [1981] 2 S.C.R. 339. And it has become part of the general law **of contract**

in the United States. See the *Restatement of the Law, Contracts* 2d (St. Paul: American Law Institute Publishers, 1981). The restatement also offers the vocabulary for the American approach to pooling clauses, and the exercise of a unilateral power to pool. See, for example, *Boone v. Kerr-McGee Oil Industries Inc.,* 217 F. 2d 63 at 65 (10th Circ., 1954), where the Court said:

> Where discretion is lodged in one of two parties to a contract or a transaction, such discretion must, of course, be exercised in good faith. That simply means that what

> is done must be done honestly to effectuate the object and purpose the parties had in mind in providing for an exercise of such power.

[58] MAS argues that where a contract contains certain conditions that require the approval of both parties, each party has an obligation to use its best efforts to secure performance of those conditions. It contends that Golden Band has failed to do anything required under the JV Agreement beyond attending one Management Committee meeting,

[59] It is critical to underscore that the JV Agreement stipulates that the parties should make their best efforts to agree on decision making and to share the costs of Mandatory Spending and approved Program Costs for the project. MAS contends that Golden Band failed to engage in the project at all.

[60] In *TNT,* Ferguson J. of the Ontario Superior Court of Justice recognized that a party is not disentitled from enforcing a contract simply due to its own imperfect performance. In other words, a litigant relying on another party's breach of contract or failure to fulfill a condition precedent to invalidate a contract must prove that it has done everything it is obligated to do to ensure the contract

is given
effect.

[61
]
Although these are subs**tantive submissions, in view of my findings in this Arbitration as**

hereinbefore articulated, it is not necessary to consider this
further argument.

**Conclusio
n**

[62] Golden Band has not complied with the provisions of the JV Agreement and in particular the capital contributions and costs and spending associated with the Exploration Program despite **numerous** cash calls by MAS since April 15, 2016. Since that date, MAS has expended approximately $1,877,372.00 on Mandatory Expenditures and the Exploration Program and during **the same period, Golden Band has not made ay contributions.**

[63] As a result of the Mandatory Spending obligations imposed by the JV Agreement and Golden Band's refusal to participate in the Exploration Programs and the Mandatory Spending re**quirements,** Golden Band's interest in the Joint Venture has been diluted below 10%. Particulars of the dilution **are a**s follows:

On December 10, 2018, and as a result of Golden Band's failure to contribute its proportionate share of the cash call reflected in the December 31, 2016 invoice, which was $9,981.05, Golden Band's interest in the JV Agreement was diluted to 24.90%;

On September 19, 2019, and as a result of Golden Band's failure to contribute to a cash call by MAS for an approved Exploration Program which was authorized by the Management Committee on January 24, 2018, Golden Band's interest in the Joint Venture was diluted to 10.41%;

On December 16, 2019, and as a result of Golden Band's failure to contribute its share of the cash call by MAS on September 16, 2019 for approved programs, Golden Band's interest was diluted below 10%.

Each of the dilutions of Golden Band's interest in the JV Agreement was in accordance with Section 16.5 of the JV Agreement.

[64] As a result of Golden Band's interest in the JV Agreement being diluted below 10%, Section 10.1 of the Joint Venture Agreement was invoked by MAS and therefore Golden Band shall convey its entire interest in the JV Agreement, subject to a 2.5% royalty payment, to MAS. [co]

[65] It is clear from the material filed that MAS has complied with all the terms of the Agreement and was never in breach. In

particular, it did not breach its duty of honesty and good faith in the performance of its obligations, nor was it negligent, nor did it breach a fiduciary duty to

Golden Band. It is also a given that the dilution provisions in Section 16.5 of the JV Agreement

apply.

[66]
It is not without significance that the only evidence adduced in this Arbitration was the

Affidavit of Andrew Davidson and exhibits. Golden Band did not file any material nor did it cross

ex
examine Mr. Davidson on his Affidavit.

[67] Although Golden Band has raised substantial arguments in its Notice to Arbitrate and written Brief, there is no evidence to support any of its allegations.

[68]
I would be amiss if I did not acknowledge the immense contribution of Mr. Gillanders and

Mr. Saxton in this Arbitration. It is a very complex matter and the Brief's filed and oral arguments

were of great assistance to me.

[69] I will remain seized of this matter to deal with any issues arising out of my decision and in particular the drafting of the order transferring Golden Band's interest in the JV Agreement to MAS in order to satisfy the Land Titles officials.

The Honourable Ronald L. Barclay, Q.C.
Arbitrator