Which date is Relevant ?

Question:

Spsmiter Pvt. Ltd. has held its Board Meeting on 22nd February, 15th May and 7th August, 2010. The 4th meeting has been convened on 28th December, 2010 but for want of quorum it has been adjourned and held on 4th January, 2011.

1st Question: Whether it had complied Companies Act, 1956.
2nd Question: Which date should be taken for the purpose of calculating the statutory period of once in every three months?
3rd Question: What will be your answer if it is a listed company?

Answer:

As per Sec. 285 of Companies Act, 1956:

In the case of every company, a meeting of its Board of directors shall be held at least once in every three months and at least four such meetings shall be held in every year.

Provided that the Central Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.

As per Sec. 288 of Companies Act, 1956:

(1) If a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

(2) The provisions of section 285 shall not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of that section could not be held for want of a quorum.

As per Sec. 191 of Companies Act, 1956:

Where a resolution is passed at an adjourned meeting of—
(a) a company;
(b) the holders of any class of shares in a company; or
(c) the Board of directors of a company;
the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

As per Clause 49 of Listing Agreement:

The board shall meet at least four times a year, with a maximum time gap of three months between any two meetings.

1st Answer : Spsmiter Pvt. Ltd. should held its Board Meeting once in every 3 months of calendar year i.e. once in every quarter viz. January – March, April – June, July – September and October – December.
The 4th BM of Spsmiter Pvt. Ltd. has been convened on 28th December i.e. within the prescribed period (Oct.-Dec.) as laid down in Sec. 285 of the Companies Act, 1956 but for want of quorum the said meeting could not take place and therefore the BM automatically stands adjourned by virtue of Sec. 288(1)till same day in the next at the same time and place. And as per Sec. 288(2), Spsmiter Pvt; Ltd. has not contravened the provision of the Sec. 285 merely by reason of the fact that the meeting is validly called but not held for want of quorum.

Thus, Spsmiter Pvt. Ltd. has complied the provision of Companies Act, 1956.

2nd Answer : It is a practical situation regarding the confusion of the date which should be taken for the purpose of calculating the statutory period of once in every 3 months.

Sec. 191 of Companies Act, 1956 clearly states that where a resolution passed at an adjourned meeting of the Board of Directors of a company it must "for all purpose" be treated as having been passed at the date of adjourned meeting and not on the date of Original meeting.
Thus we can take a conclusion that the statutory period should be calculated from the date at which the adjourned meeting was held.

However, notwithstanding the phrase "for all purpose" appearing in Sec. 144 of English Act (Buckely's Companies Act), in as much as our Sec. 191 is the vevatim copy of sec. 144, we can rely on this treatise and relying thereon, we may conclude that the continuity of the original meeting will be remain unhampered.
Therefore, for the purpose of holding the next Board Meeting in the year 2011, statutory period of "every 3 months" should be computed from the date when the original meeting was adjourned for want of quorum.

3rd Answer : If Spsmiter Pvt. Ltd. is a listed company then it must also comply clause 49 of the Listing Agreement which required that 4 BM must be held every year and the time gap between 2 BM should not exceed 3 months. The time gap between 7th August and 28th December is exceeding 3 months.
Hence, Spsmiter Pvt. Ltd. does not comply the clause 49 of the Listing Agreement.