**Brief Procedural Note on Merger of Holding and wholly subsidiary u/s 233:**

Merger of Holding and its wholly subsidiary can be done under section 233 by approaching the below authorities

* Registrar of Companies (ROC),
* Central Government (Power delegated to Regional Director (RD)),
* Official liquidator,
* shareholders of the Companies and
* Creditors of the Company

without approaching National Company Law Tribunal (NCLT) (erstwhile High Court).

**The steps involved will be as follows:**

1. Notice inviting objection for proposed merger is to be send by both Transferor and Transferee company in Form CAA9 to
* Registrar of Companies
* Official Liquidator
* Any person whose interest is likely to be affected by the proposed scheme (very wide term. No explanation provided in the rules)
1. Each of the Company involved in Merger to file declaration of solvency **Form No. CAA.10** before convening the meeting of members and creditors for approval of the scheme with the following attachment
* Copy of board resolution
* Statement of assets and liabilities
* Auditor’s report on the statement of assets and liabilities
1. Both the Company to convene separate meetings for Shareholders and Creditors. Resolution for Merger should be approved
* by members or class of **members** holding atleast **ninety percent** of the total number of shares and
* at least **nine tenths** in value of **creditors**.
1. the Transferee company shall, within seven days after the conclusion of the meeting of members or class of members or creditors or class of creditors, **file a copy of the scheme** as agreed to by the members and creditors, along with a report of the result of each of the meetings in **Form No. CAA.11**
* with the Central Government (delegated to RD),
* the Registrar of Companies in **Form No. GNL-1** and
* the Official Liquidator through hand delivery or by registered post or speed post.
1. Where no objection or suggestion is received to the scheme from the Registrar of Companies and Official Liquidator or where the objection or suggestion of Registrar and Official Liquidator is deemed to be not sustainable and the Central Government (delegated to RD) is of the opinion that the scheme is in the public interest or in the interest of creditors, the Central Government (RD) shall issue a confirmation order of such scheme of merger or amalgamation in **Form No. CAA.12**.
2. Where objections or suggestions are received from the Registrar of Companies or Official Liquidator and the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may file an application before the Tribunal in **Form No. CAA.13 within sixty days** of the receipt of the scheme stating its objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act.
3. The confirmation order of the scheme issued by the Central Government or Tribunal under sub-section (7) of section 233 of the Act, shall be filed, **within thirty days** of the receipt of the order of confirmation, in **Form INC-28** having jurisdiction over the transferee and transferor companies respectively.
4. It is clarified that with respect to schemes of arrangement or compromise falling within the purview of section 233 of the Act, the concerned companies may, at their discretion, opt to undertake such schemes under sections 230 to 232 of the Act, including where the condition prescribed in clause (d) of sub-section (1) of section 233 of the Act has not been met.